CAPACITY OF VESSELS TO MEET U.S. IMPORT AND EXPORT REQUIREMENTS

(111–96)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

March 17, 2010

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE
55–536 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
RUSS CARNAHAN, Missouri
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
MAZIE K. HIRONO, Hawaii
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
SOLOMON P. ORTIZ, Texas
PHIL HARE, Illinois
JOHN A. BOCCIERI, Ohio
MARK H. SCHAUER, Michigan
BETSY MARKEY, Colorado
MICHAEL E. MCMAHON, New York
THOMAS S. P. PERRIELLO, Virginia
DINA TITUS, Nevada
HARRY TEAGUE, New Mexico
JOHN GARAMENDI, California
VACANCY

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
VERNON J. EHLERS, Michigan
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
CONNIE MACK, Florida
LYNN A WESTMORELAND, Georgia
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio
BRETT GUTHRIE, Kentucky
ANH "JOSEPH" CAO, Louisiana
AARON SCHOCK, Illinois
PETE OLSON, Texas

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

ELIJAH E. CUMMINGS, Maryland, *Chairman*

CORRINE BROWN, Florida
RICK LARSEN, Washington
GENE TAYLOR, Mississippi
BRIAN BAIRD, Washington
TIMOTHY H. BISHOP, New York
STEVE KAGEN, Wisconsin
MICHAEL E. McMAHON, New York, *Vice Chair*
LAURA A. RICHARDSON, California
JAMES L. OBERSTAR, Minnesota *(Ex Officio)*

FRANK A. LoBIONDO, New Jersey
DON YOUNG, Alaska
HOWARD COBLE, North Carolina
VERNON J. EHLERS, Michigan
TODD RUSSELL PLATTS, Pennsylvania
PETE OLSON, Texas

CONTENTS

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

March 16, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on the "Capacity of Vessels to Meet U.S. Import and Export Requirements"

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene on Wednesday, March 17, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding the capacity of ocean-going vessels to meet U.S. import and export demands.

On March 11, 2010, President Barack Obama signed an Executive Order creating a National Export Initiative that calls for a doubling of U.S. exports over the next five years. The Executive Order anticipates that the Federal Government can support achievement of this goal by "removing trade barriers abroad, by helping firms – especially small businesses – overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps."[1] The Executive Order establishes an Export Promotion Cabinet comprised of the Secretaries of State, Labor, Treasury, Agriculture, Commerce and the Director of the Office of Management and Budget, the United States Trade Representative, and other agencies involved in trade. Notably, the Department of Transportation was not designated to be a member of the Export Cabinet.

Anecdotal evidence and reports appearing in the *Wall Street Journal* and other media sources suggest that the ability of the United States to expand export levels is threatened by the lack of vessel capacity and regional shortages within the United States of the containers in which many

---

[1] The White House, Office of the Press Secretary, *Executive Order – National Export Strategy* (March 11, 2010).

goods are now shipped.[2] Such capacity limitations could have a significant impact on the success of the President's National Export Initiative.

BACKGROUND

Prior to the 1950s, cargo was typically loaded directly into the hold or onto the deck of ships in break-bulk form (piece by piece) or in a variety of pallets, crates, or drums depending on the nature of the cargo. The process of handling such cargo as individual pieces was slow and could be unwieldy; cargo moved in this form was also susceptible to damage and theft.[3]

After World War II, shipping companies began to experiment by packing cargo into container boxes of varying sizes that were then loaded onto vessels. Malcom McLean perfected the concept of "containerization" by removing the box portion of highway trucks from their chassis systems and placing them on a vessel, yielding a box that could be moved from a ship onto a train or back onto a truck in a seamless manner.[4] The size of the containers was eventually standardized at 20 feet and 40 feet when the International Standards Organization adopted box dimensions developed by the American Society of Mechanical Engineers.[5] Today, boxes (and a container ship's carrying capacity) are measured based on 20-foot boxes known as Twenty-foot Equivalent Units (TEU).

By the 1990s, shipping containers had become essential components in the globalization of trade and of the manufacturing process. As the shipping container gained wide acceptance, vessels and port infrastructure were re-designed to accommodate containers, which are typically moved between dock and vessel by dock-side container cranes.

The use of containers protects cargo from damage and deters theft; it has also contributed to efficiency in the global supply chain. In the 1970s, it would typically have taken 50 days to ship cargo from Hong Kong to New York, but containerized cargo can now make that journey in approximately 17 days.[6]

Today, the busiest container trade routes to and from the United States are the Trans-Pacific routes and the Trans-Atlantic trade routes. The Trans-Pacific trade, which accounts for roughly 60 percent of U.S. international container cargo traffic, consists of routes between ports in the United States and Asia.[7] The Trans-Atlantic trade between the United States and Europe accounts for approximately 20 percent of U.S. international container cargo traffic. The remaining 20 percent of cargo traffic consists of U.S. container routes between ports in the United States and other ports around the world.[8]

---

[2] Jennifer Levitz, Tamara Audi, and John Miller, *Export Revival Threatened by Shipping Bottlenecks*, The Wall Street Journal (March 12, 2010).
[3] Belay Seyoum, *Export-Import Theory, Practices and Procedures* (2000), at 21.
[4] Alex Roland, W. Jeffrey Bolster, and Alexander Keyssar, *The Way of the Ship: America's Maritime History Reenvisioned, 1600-2000* (2008), at 347-348.
[5] *Id.* at 349.
[6] *Shipping Container Housing Guide*, www.shipping-container-housing.com/index.html.
[7] *Facts About Serving U.S. Export Commerce*, World Shipping Council (February 2010), at 1.
[8] *Id.*

The firm IHS Global Insight completed a study of U.S. maritime policy for the U.S. Maritime Administration (MARAD) in early 2009. This study found that, at that time, approximately 17 percent of "total seaborne tons imported and exported by the U.S. are currently containerized."[9] The study estimates by the year 2038, nearly one-third of U.S. trade will move in containers.[10]

The worldwide merchant fleet is reported by the International Maritime Organization to consist of just over 52,900 vessels; the fleet has an average age of 20 years.[11] Approximately 72 percent of this fleet is comprised of oil tankers and dry bulk carriers; container vessels account for approximately 12.9 percent of the fleet.[12] According to the MARAD, in 2006, there were 16,749 vessels in the world merchant fleet of 10,000 deadweight tons (or more).[13] At the end of 2007, there were 89 U.S.-flagged vessels operating in the foreign trade; there are an additional 100 self-propelled ocean-going U.S.-flagged vessels in the Jones Act trade (domestic coastwise trade).[14]

I. Vessel Capacity and Cargo Demand Variances

The carrying capacity of an individual vessel is determined by a number of factors, including the weight of the cargo carried in the vessel and whether the vessel's design limits the number of 20-foot or 40-foot TEUs that it can carry. Vessel capacity on a given trade route is then determined by the number and carrying capacity of the vessels transporting goods on that route. Depending on the trade, a vessel liner service typically operates four to 10 vessels between the same destination and origin on a regular (often weekly) basis. The number of vessels, the availability of empty container boxes, and the vessel capacity on a particular service are then also affected by the cargo volumes in the origin and destination ports.[15]

Cargo volumes in one direction of a trade route are often greater than cargo volumes in the other direction. For example, on the Trans-Pacific route, cargo volumes are generally greater for routes that import goods into the United States than for routes that export goods from the United States into Asia. Overall, import shipments of containers to the United States (measured in 20-foot TEUs) are approximately 1.5 times the number of export TEUs. However, import TEUs are double the number of export TEUs in the U.S.-Trans-Pacific Trade and import TEUs are 1.1 times the number of export TEUs in the U.S.-Trans-Atlantic Trade.[16]

Imports into the United States from Asia are typically finished goods such as electronics, clothes, and toys, which are lighter than the types of goods typically exported from the United States, such as grain, scrap paper, and scrap metal. Export TEUs in the Trans-Pacific trade typically

[9] IHS Global Insight, Inc., *An Evaluation of Maritime Policy in Meeting the Commercial and Security Needs of the United States*, (January 7, 2009), at 12.
[10] *Id.*
[11] International Maritime Organization, *International Shipping and World Trade Facts and Figures* (October 2009), at 11.
[12] *Id.*
[13] MARAD, *Detail Flag of Registry, Country Ownership and Build*, http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm.
[14] HIS Global Insight, Inc., *An Evaluation of Maritime Policy in Meeting the Commercial and Security Needs of the United States* (January 7, 2009), at 2.
[15] *Facts About Serving U.S. Export Commerce*, World Shipping Council (February 2010), at 1.
[16] *Id.* at 2.

weigh on the order of 12 tons whereas import TEUs may weigh nine tons.[17] When carrying a heavy cargo, a vessel can be deemed "full" from a weight perspective even though there are empty spaces in which containers could be placed. [18] Thus, a vessel carrying imports from Asia can be two-thirds the weight of a vessel carrying exports from United States, which can yield a difference of 1,000-2,000 total TEU carrying capacity on some vessels.

Some experts argue that U.S. ports are designed to focus on the handling of import rather than export cargoes.[19] Also, foreign shipping companies craft their schedules and routes to accommodate U.S. imports rather than exports.[20]

II. Actions by Carriers

Historically, cartels of liner services called "conferences" have jointly established tariff rates for ocean freight. In 1916, Congress formally sanctioned the cartel system when it enacted the Shipping Act,[21] which granted common carriers acting in collusion exemptions from certain anti-trust requirements that would otherwise have applied. In 1961, Congress required that agreements concluded by cartels be filed with the Federal Maritime Commission (FMC), which was created to succeed the U.S. Shipping Board. The FMC was authorized to reject agreements that it found to be "contrary to the public interest;" however, many complained that the FMC took too long to render decisions on the agreements filed with it.

Following a series of court decisions that appeared to limit the antitrust immunity of cartels, Congress enacted the Shipping Act of 1984 (P.L. 98-237) (Shipping Act). The Shipping Act re-affirmed carriers' antitrust immunity and also allowed carriers to enter into service contracts with shippers, but the cartels often moved to limit the ability of carriers to enter such agreements. Further, the Shipping Act eliminated the requirement that the FMC make affirmative decisions on the agreements filed with it; instead, agreements were allowed to enter into force unless challenged by the FMC. The FMC was authorized to challenge only those agreements that were likely to result in "an unreasonable reduction in transportation service or an unreasonable increase in transportation cost."

In 1998, Congress enacted the Ocean Shipping Reform Act (P.L. 105-258) (Reform Act), which explicitly allowed carriers to establish confidential service contracts without the approval of conferences. Rates negotiated between carriers and shippers were not required to be disclosed. However, the Reform Act continued to affirm the grant of anti-trust immunity to many agreements concluded by carriers acting in concert.

In October 2008, the European Union eliminated the so-called "block immunity" it had provided to ocean carriers. With the elimination of this immunity, carriers providing service to Europe are prohibited from colluding in the establishment of tariff rates; however, antitrust immunity will continue to be granted for other types of service agreements concluded by carriers.

---

[17] *Id.*

[18] Ronald D. White, *Export Firms Missing The Boat, Outgoing Containers are in Short Supply as Demand for U.S. Goods Rises and Imports Fall,* LA Times (May 12, 2008), http://articles.latimes.com/2008/may/12/business/fi-containers12.

[19] Jennifer Levitz, Tamara Audi, and John Miller, *Export Revival Threatened by Shipping Bottlenecks,* The Wall Street Journal, (March 12, 2010).

[20] *Id.*

[21] 46 App. U.S.C. § 1701 (2009).

The Transpacific Stabilization Agreement (TSA), established in 1989 in the Asia-U.S. trade, is a modern example of an agreement among carriers. The TSA is comprised of 15 ocean carriers; members are authorized by shipping laws of the United States and of Asian governments to:

- "Meet, exchange market information and jointly conduct market research;
- Represent carrier interests in consultations with government regulatory bodies and with designated shipper organizations;
- Develop voluntary, non-binding guidelines for rates and charges;
- Discuss ways members can manage costs and improve efficiency; and
- Establish common terms of service and standards for certain documentation, information systems development and other activities in the public interest, also on a voluntary, non-binding basis."[22]

III. Impact of the Global Recession on Shipping

The global container trade has steadily declined in recent years for the first time in approximately 50 years; this decline is due to the worldwide economic crisis associated with the banking and housing crisis in the United States and other nations. In 2009, not including the intra-Asia trade, the global container volume declined approximately 30 percent.[23] In 2009, global container lines lost $20 billion collectively as rates on container vessels fell approximately 50 percent.[24] On average, carriers reportedly lose approximately $200 on every container that leaves an Asian port.[25] This decline has created challenges in the container trade for both shippers and carriers.

Between 2008 and 2010, freight rates have shown wide variation, with the lowest rates occurring in 2009. To combat the record losses, carriers in the TSA have agreed to increase freight rates in 2010; some shippers claim the increases have been as high as 35 percent.[26] The chart below shows the typical components of the rates charged by TSA to move a 40-foot TEU in 2010.

Rising Container Rates in 2010 For 40-foot Containers Moved on Vessels Participating in the TSA in the Asian-U.S. trade routes

Emergency revenue charge[27]*	$400
General rate increase (U.S. West Coast)	$800
General rate increase (U.S. East/Gulf Coasts)	$1,000
Peak season surcharge	$400
Bunker fuel surcharge (February)	$860
Bunker fuel surcharge (March)	$905

Source: *Fairplay* Magazine

[22] *Transpacific Stabilization Agreement*, http://www.tsacarriers.org/about.html.
[23] Bill Mongelluzzo, *From Boiling Point to Break Even*, Journal of Commerce (March 8, 2010).
[24] *Tempers Flare*, Journal of Commerce (March 8, 2010).
[25] Bill Mongelluzzo, *From Boiling Point to Break Even*, Journal of Commerce (March 8, 2010).
[26] *Shippers Blame Carriers Over Soaring Rates*, Fairplay, (February 18, 2010).
[27] Scheduled to end after contracts are re-negotiated in May.

In 2008, carriers increased the freight rates for U.S. exports in several trade routes including the Trans-Pacific route. One carrier company raised rates by $150 per 20-foot TEU and by $200 for a 40-foot TEU on the Trans-Pacific route.[28] In mid 2009, the price to ship a 20-foot container from Portland to Taiwan was $1,000; as of January 2010, the cost was approximately $1,650.[29]

In addition to raising rates, due to the loss of revenue, some carriers are operating at slower speeds or simply removing vessels from service either by scrapping the vessels or anchoring the vessels offshore (commonly referred to as "laying up"). Data provided to the Subcommittee by the World Shipping Council indicate that as of February 2010, there were 532 vessels laid up worldwide (comprising 10.4 percent of the worldwide tonnage). In 2009, 200 vessels were scrapped, eliminating approximately 400,000 TEUs of vessel capacity.[30] Report indicates the number of vessels scrapped in 2009 is more than the number of vessels scrapped in total over the past 10 years.[31]

Cutting the speed of a vessel by 20 percent (commonly referred to as slow-steaming) can reduce the fuel consumption of a vessel by up to 50 percent and thus reduce operating costs.[32] In 2009, the global fleet's carrying capacity was reduced by approximately 440,000 TEUs due to slow-steaming. Currently, approximately 50 percent of the 19 routes from Asia to the East Coast of the United States are slow-steamed.[33] If a carrier operates vessels at a reduced speed, the carrier will often add an additional vessel or vessels to the service to try to maintain weekly schedules.

In addition to slow-steaming and removing vessels from service, in 2008, carriers significantly decreased the number of containers they shipped back and forth to the United States and Asia and shifted vessels away from routes serving the United States to routes in other markets, such as Asia-Europe routes and routes between Asian countries where economic demand was still relatively strong.[34]

As the U.S. economy began to slow in 2008, American demand for goods from Asia decreased, thus decreasing U.S. imports. However, the demand for U.S. exports has recently increased due to the weakened U.S. dollar and Asia's continued economic growth; growth in export demand was particularly strong in the fourth quarter of 2009. These export increases coupled with a decrease in imports created a shortage of containers in some parts of the United States. As global credit markets began to ease and the U.S. economy began to rebound, the issue of a container shortage became more pronounced in late 2009.

Exacerbating the lack of vessel capacity is the decreased number of bulk carriers in the shipping trade. A significant number of break-bulk vessels were removed from service due to age and inoperable equipment (break-bulk cargo is cargo that is loose or packaged in containers other

[28] Bruce Barnard, *CMA CGM to Hike U.S.-Asia Rates*, The Journal of Commerce (March 5, 2010).
[29] Richard Read, *Container Shortage Threatens Portland, Northwest Export Boom*, The Oregonian (January 7, 2010).
[30] Bill Mongelluzzo, *From Boiling Point to Break Even*, Journal of Commerce (March 8, 2010).
[31] Jennifer Levitz, Tamara Audi, and John Miller, *Export Revival Threatened by Shipping Bottlenecks*, The Wall Street Journal (March 12, 2010).
[32] Bill Mongelluzzo, *From Boiling Point to Break Even*, Journal of Commerce (March 8, 2010).
[33] Jennifer Levitz, Tamara Audi, and John Miller, *Export Revival Threatened by Shipping Bottlenecks*, The Wall Street Journal (March 12, 2010).
[34] Ronald D. White, *Export Firms Missing The Boat, Outgoing Containers are in Short Supply as Demand for U.S. Goods Rises and Imports Fall*, LA Times (May 12, 2008), http://articles.latimes.com/2008/may/12/business/fi-containers12.

than TEUs). Instead of building more break-bulk vessels, carriers are opting to build more container vessels or even to convert old break-bulk vessels into container vessels. Due to the limited number of bulk vessels, space availability has significantly decreased making the prices for shipping bulk cargoes on break-bulk vessels (such as grains and scrap metal) more expensive than shipping such items in containers on container vessels. Additionally, once Asian customers have received their cargo in sealed containers, they generally show a preference for receiving containers (rather than bulk shipments) in the future, including for their agricultural products; this has created an increased demand for refrigerated containers (commonly referred to as "reefers").[35]

IV. <u>Effects on American Suppliers/Exporters</u>

Despite the increased demand for exports, U.S. exporters are having a difficult time taking advantage of the competitiveness of U.S. exports created by the weakness of the dollar. Some shippers report they are continuing to experience a shortage of empty cargo containers to carry their goods. Once they have found a container, shippers are sometimes waiting several weeks to secure a space on an empty vessel bound for Asia. A recent report in the *Wall Street Journal* highlighted a situation in which "[e]ighty rail cars filled with dried peas sat for weeks on train tracks outside Seattle, waiting for a ship to India."[36] In the past, shippers were generally able to book space on a ship in a week; shippers may now have to wait as long as a month to secure a space.[37]

Additionally, some shippers have seen their cargo "rolled-over," meaning that even though they had a contract in place guaranteeing the date on which the cargo would be loaded onto a vessel, the contract was not honored and the cargo was left on the dock, subjecting the shipper to storage fees and the potential loss of a customer. Reports of such incidents are becoming increasingly common. For example, a recent media report details the experience of one commodity trader who reported delays both in obtaining containers and in obtaining shipping service on a vessel. After a 19-day delay in obtaining containers he had ordered, he loaded the containers onto a barge to a location in Idaho where the containers were loaded with a perishable agricultural commodity. The containers were then sent back to a U.S. port for delivery overseas. At the port, however, the vessel on which he intended to ship the containers was full, and the cargo (worth an estimated $400,000) was left on the dock. A week later, it was finally loaded onto a ship. Due to the delay, the shipper was subjected to penalty payments, increased shipping rates, and the possibility that the cargo would be rejected when it arrived at its destination because it had ripened.[38]

Because there are no profits associated with carrying empty containers (and such containers take up space that could be given to a container carrying a cargo), shipping lines/carriers have no incentive to bring empty containers to the United States.[39] However, particularly because the products exported from the United States to Asia are typically heavier than the products imported into the United States from Asia, if a vessel leaving the United States bound for Asia reaches the maximum weight capacity before the container load capacity is reached, carriers can use the available container space to carry empty containers back to Asia.

---

[35] *Id.*
[36] Jennifer Levitz, Tamara Audi, and John Miller, *Export Revival Threatened by Shipping Bottlenecks*, The Wall Street Journal (March 12, 2010).
[37] Stephanie Nall, *Reefers in a Squeeze*, The Journal of Commerce (February 1, 2010).
[38] Richard Read, *Container Shortage Threatens Portland, Northwest Export Boom*, The Oregonian, (January 7, 2010).
[39] William Armbruster and Janet Nodar, *Shortage of Vessel Capacity and Containers Frustrate Fowarders*, Gulf Shipper (April 14, 2008), at 6.

V. Container Shortages

There appear to be container shortages in certain geographical areas of the United States. Large port areas, such as Long Angeles/Long Beach or New York, typically have a surplus of containers. Reports indicate that the port complex of Los Angeles and Long Beach has had empty containers available to be shipped back to Asia.[40] The strength of the Euro is also drawing an increased number of exports out of East coast ports bound for Europe, causing shippers to direct empty containers to the East coast instead of bringing them to the U.S. interior.[41]

However, areas in the U.S. interior that produce many agricultural products (e.g., the Great Plains) are commonly experiencing container shortages. Agricultural suppliers in the Midwest, Washington, and Oregon have been reporting a shortage of containers, including refrigerated containers. Reports also indicate that Seattle has been greatly affected by the shortage of containers since most of the cargo arriving from Asia that is offloaded in Seattle is moved east into the U.S. interior, but the containers are not being moved back into the Seattle area.

The regional shortage of containers is attributable in part to the high cost of transporting empty containers to a region where they can be loaded with goods. The high cost of fuel and the general economic downturn has caused the rail and truck carriers that would typically be used to reposition containers to cut back on their inland services.[42]

When space on a vessel is at a higher demand, the value of the cargo plays a role in determining which shipper will get space on the vessel. Carriers prefer higher valued cargoes, for which carriers can charge higher rates. For example, in the Gulf Coast area of the United States, where chemicals are among the products typically offered for export, lower valued cargoes such as scrap metal (which can also damage containers) are typically rejected by carriers, leaving shippers of such lower value cargoes in a difficult position.[43] As a result, shippers of low value cargoes may have fewer choices when they attempt to ship their cargoes.

Faced with the difficulty of obtaining a container and finding a place on an outbound vessel, some shippers have resorted to shipping their cargo by air freight despite the fact that air cargo is much more expensive than shipping on a vessel.

VI. Recent Developments

In 2010, imports from Asia are expected to grow five to 10 percent; exports to Asia are also expected to grow.[44] As global credit markets ease, consumers in developing countries will likely buy

---

[40] Ronald D. White, *Export Firms Missing The Boat, Outgoing Containers are in Short Supply as Demand for U.S. Goods Rises and Imports Fall*, LA Times (May 12, 2008), http://articles.latimes.com/2008/may/12/business/fi-containers12.

[41] Steve Wilhelm, *What's Crimping Washington Ag Exports? Shipping Container Shortage*, Puget Sound Business Journal, (May 30, 2008).

[42] William Armbruster and Janet Nodar, *Shortage of Vessel Capacity and Containers Frustrate Fowarders*, Gulf Shipper, (April 14, 2008), at 8.

[43] *Id.*

[44] Bill Mongelluzzo, *From Boiling Point to Break Even*, The Journal of Commerce (March 8, 2010).

higher value goods and increase the diversity of the goods they purchase, likely increasing the demand for U.S. farm exports.[45]

Recent reports indicate that ocean carriers intend on restoring 40 vessels into service by the end of April 2010.[46] Further, as the demand for container shipping has declined, two of Japan's largest shipping firms recently negotiated with shipbuilders to convert seven previously ordered container vessels into bulk, crude, and product carriers.[47] Additionally, shipping lines worked with Asian shipyards to delay at least 50 percent of vessel deliveries for six months or more.

Previous Committee Action

The Subcommittee on Coast Guard and Maritime Transportation has not previously held a hearing on the capacity of vessels to meet U.S. import and export requirements.

Witnesses

Panel I

Mr. Richard A. Lidinsky, Jr.
Chairman
Federal Maritime Commission

Panel II

Robert F. Sappio
Senior Vice President
Pan American Trade
APL Limited

Chris Mullally
President
Mohawk Trading Company

Hayden Swofford
Executive Director
Pacific Northwest Asia Shippers Association

Michael Berzon
President, Mar-Log Inc.
Chairman, Ocean Transportation Committee
National Transportation League

---

[45] Stephanie Nall, *Reefers in a Squeeze*, The Journal of Commerce (February 1, 2010).
[46] Bruce Barnard, *Ocean Carriers Restoring Some Idled Ships*, The Journal of Commerce (March 9, 2010).
[47] Hisane Masaki, *NYK, "K" Line Alter Container Ship Orders*, The Journal of Commerce (March 10, 2010).

HEARING ON CAPACITY OF VESSELS TO MEET U.S. IMPORT AND EXPORT REQUIREMENTS

Wednesday, March 17, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:57 a.m., in Room 2167, Rayburn House Office Building, the Honorable Elijah E. Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. The Subcommittee will come to order.

Today, the Subcommittee convenes to consider the shortage of shipping services, and regional shortages of shipping containers, available to carry United States trade, particularly exports.

A recent article in the Wall Street Journal succinctly summarizes the basic problem. The United States has traditionally received more imports—which are typically comprised of finished consumer goods such as clothes, electronics, and furniture—than we have shipped exports, which are typically comprised of bulk products, including agricultural products.

The recession that occurred in 2009 reduced our Nation's demand for imports and reduced the total worldwide shipping volumes, causing shipping rates and, thus, carriers' profits, to plummet. Carriers have responded by pulling ships off global trade routes and laying them up at anchor. They have also responded by sailing more slowly to reduce fuel costs.

Now, just as demand for United States goods abroad has begun to rise, shippers are finding that outbound capacity is limited and that containers are scarce, particularly in the United States interior, where many agricultural exports are produced. U.S. exporters also report that when service is available, carriers are often assessing extra surcharges in an attempt to raise their revenues.

That said, the problems we are currently experiencing are not entirely new. While the reduction in shipping capacity is a direct result of recent economic trends, container shortages were not uncommon in some U.S. regions even before the economic downturn.

While the limited availability of shipping capacity and of empty containers would be serious concerns at any time, these current capacity constraints are occurring just as President Obama has announced the goal of doubling United States exports over the next five years. Increasing our Nation's level of exports is critical to reducing our unsustainable trade deficits and to carrying our recovery economy forward.

That said, if individual economic trends in the maritime industry do not support the increased carriage of products from the United States to destinations abroad, our Nation's ability to expand its exports may be threatened even if there is increased demand for such products.

Today's hearing will enable us to assess the true extent of the shipping capacity problem, as well as the options that are available to the United States to deal with this problem.

Before we hear from our witnesses, let me take just a brief moment and place this current challenge in a broader historical context.

As is recounted in several excellent studies, such as The Way of the Ship and The Abandoned Ocean, in the decades prior to the United States Civil War, more than two-thirds of U.S. foreign commerce was carried in U.S.-flagged ships.

During the Civil War, U.S.-flagged vessels became the targets of raiding attacks carried out by the Confederacy. Although the United States lacked adequate naval forces to protect merchant shipping, when insurance premiums began to rise, the United States Government generally refused to offer subsidies or assistance to cover these premiums. United States shipowners responded by selling their vessels to foreign entities or by reflagging their vessels in foreign nations, predominantly Britain.

Laws in existence at the time prohibited ships sold foreign from returning to the United States flag and, shortly after the Civil War ended, the Congress passed a law explicitly prohibiting U.S.-owned ships that had been flagged foreign from returning to the United States flag.

It is estimated that more than half of the ships that had been under the United States flag at the start of the Civil War left our flag. By 1880, the already reduced U.S.-flagged merchant fleet had begun a continual decline that has never effectively been reversed, even with the ship construction booms that occurred during World War I and World War II.

In the 20th century, as global economic forces have shaped the environment in which the United States-flagged vessels have sailed, the U.S. has pursued and discarded a number of policies in what has been presented as an ongoing effort to accomplish what the Maritime Administration now describes as its mission of improving and strengthening the United States maritime transportation system to meet the economic, environment, and security needs of our Nation.

These policies, which have included construction subsidies, operating subsidies, the Title XI program, cargo preference programs, and now the Maritime Security Program, have been individually designed to pursue specific, narrow objectives. However, they have utterly failed in their stated objective of maintaining a U.S.-flagged fleet capable of carrying U.S. trade.

Next week we will hold a hearing to examine in more depth the state of the U.S.-flagged fleet. However, let me provide a few statistics to set the stage for today's hearing.

According to a study produced in 2009 by IHS Global Insight for the United States Maritime Administration, in 1975 there were 857 ocean-going U.S.-flagged ships with a carrying capacity of more than 17.6 million deadweight tons. At the end of 2007 there were 89 U.S.-flagged ships operating in the foreign trades, and these ships are highly dependent on U.S. Government-impelled cargoes. As a result, the U.S.-flagged fleet is estimated by IHS to be carrying less than two percent of U.S. foreign trade.

Consequently, as we will discuss today, U.S. exporters, as well, of course, as U.S. importers, are subject to the business decisions and practices of foreign-flagged carriers when they move their products.

Throughout the 20th century, these carriers have jointly set rates and have coordinated other business activities, a practice sanctioned by U.S. law, which grants the carrier cartels immunity from many antitrust provisions that would typically apply in the United States.

Over the past century, as the U.S.-flagged carrying capacity has continued its steep decline, there have been many voices warning that this decline constituted both a security risk and an economic risk. These risks remain real today. At a minimum, they must be acknowledged for what they are, but I would certainly hope that, as we work to expand U.S. exports, we also work to formulate meaningful U.S. maritime policy that will revitalize our merchant marine and expand the percent of U.S. trade carried in United States ships.

With that, I recognize our distinguished Ranking Member, Mr. LoBiondo.

Mr. LOBIONDO. Thank you very much, Mr. Chairman.

Like nearly every part of our economy, the maritime transportation sector has been significantly impacted by the recent economic downturn. During this time, demand for imported goods has declined and many ocean carriers have been forced to respond by reducing the number of vessels in operation and route service in order to minimize cost and keep their businesses afloat.

While this may have been necessary to keep carriers solvent in the near term, some in the transportation community complain that it is becoming increasingly difficult to transport goods in and out of U.S. ports. The concern appears to be especially strong for exporters, who have seen an increase in demand for U.S. goods and products.

Recently, due to a weak dollar and other economic factors, U.S. exports have grown significantly. As economic conditions begin to stabilize, in the coming years, U.S. manufacturers may be in a position to further increase volumes of exports and, in so doing, create new American jobs.

I hope today's hearing will give the Subcommittee an opportunity to hear from all parties and to lay out strategies that will support carriers, shippers, and U.S. producers in the long-run. It is in the interest of all parties to work through these issues and strengthen maritime commerce between the United States and our trading partners.

I thank you, Mr. Chairman, and I yield back my time.

Mr. CUMMINGS. Thank you very much, Mr. LoBiondo.

Now we will hear from our panel, and we welcome Mr. Richard Lidinsky, who is the Chairman of the Federal Maritime Commission. This is your second appearance, I think, as Chairman. This is the second one, right? And we congratulate you. I see that you are joined by Ms. Dye and?

Mr. LIDINSKY. Our Deputy General Counsel, Ms. Fenneman.

Mr. CUMMINGS. Glad to have both of you. I understand that you will be testifying?

Mr. LIDINSKY. They will assist me with questions and answers.

Mr. CUMMINGS. Very well. Thank you very much. And, again, congratulations.

Mr. LIDINSKY. Thank you very much, Mr. Chairman.

Mr. CUMMINGS. Before you even start, I want to recognize a woman who has just been just so wonderful to me and one who has spent just a phenomenal amount of time working on maritime issues, former Congresswoman, always Congresswoman Helen Bentley. I am so pleased that you have taken a moment to spend some time with us. Thank you, and thank you for all that you have done not only for me, but for our Nation and certainly the maritime industry.

Thank you.

TESTIMONY OF RICHARD A. LIDINSKY, JR., CHAIRMAN, FEDERAL MARITIME COMMISSION

Mr. LIDINSKY. Thank you, Mr. Chairman. Good morning to Mr. LoBiondo as well.

With me this morning is our Commissioner, Rebecca Dye; our Deputy General Counsel, Rebecca Fenneman; and also in the audience Commissioner Michael Khouri.

The Commission is keenly aware of complaints by U.S. exporters and, more recently, importers about the difficulty of obtaining space to ship their products. Over the past few months, Commission staff, Commissioners and I have held a number of meetings with various carriers, shippers, and representatives of the Transpacific Stabilization Agreement, which is the largest ocean carrier agreement, and of the Westbound Transpacific Stabilization Agreement as well. We have met with the National Industrial Transportation League, National Retail Federation, the Agriculture Transportation Coalition, and the Pacific Coast Council of Brokers and Freight Forwarders.

Reports from shippers have been remarkably similar. Many say they have been forced to amend their service contracts and commit to higher, and at times, auction rates in order to have their cargo carried. Many have complained of their cargo being delayed or rolled to future sailings. Exporters, particularly agricultural exporters, have had difficulty in obtaining containers. Carriers, on the other hand, point immediately to losses incurred over the past two years due to economic conditions, claiming that they collectively lost $15 to $20 billion and have just begun stabilizing at this point.

Over the last few turbulent months, we as a Country have emerged from economic conditions the likes of which we have not seen for 70 years, and the shipping industry is no exception.

It appears that the core of the problem is that carriers removed vessels from service after a dramatic drop in demand in the depths of the recession in late 2008 through 2009. Recently, demand for container transportation has increased as the American economy has begun to recover. But, by all reports, vessels have not been redeployed as fast as demand for space has increased.

Ocean carriers advise us that they do anticipate moderate capacity increases, bringing in new vessels and expanding service. But according to respected forecasters, there will be an increase of approximately 2 percent this April in capacity. Two new lines will work in the Pacific, but, nevertheless, the projected April capacity is still more than 6 percent below where capacity stood in April of 2009.

The ocean carriers' cautious reaction might be explained by the tremendous impact the recession had on their finances, as well as economists' uncertainty over how much the recent uptick resulted from restocking of low inventories, as opposed to a sustained increase in demand. On the other hand, available shipping space is a key ingredient for the financial recovery of American exporters and importers.

The Commission understands the aftershock of the tremendous economic swings of the past two years affecting both parties. We know from experience that trades are almost never in perfect balance as to imports and exports. From the outset of containerization 50 years ago, there have been fluctuations between undercapacity and overcapacity.

However, we are also mindful of the increased demand for cargo space representing a good sign for the economy and this industry overall. In this regard, cargo shipments in the January-February time period of 2009 saw a 32 percent increase for the Ports of Los Angeles and Long Beach as opposed to a year ago. Liner imports increased 13 percent in that period as well.

Nevertheless, we are seriously concerned with the current situation, particularly with reports of U.S. exporters unable to obtain space. As you know, it is expressly stated in the Shipping Act that this agency is to "promote growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace." And, as the Chairman mentioned in his statement, the President has directed all Federal agencies to "use every available resource" to increase exports over the next five years."

The Commission is doing its part to advance Congress's and the President's proposals in two key areas. We are pursuing a number of avenues, but we have recently met with the Department of Agriculture staff and the Westbound Transpacific Stabilization Agreement in an effort to develop an information system that would enable agricultural shippers to identify the locations of available empty shipping containers.

Insufficient container availability has been a recurring problem affecting our agricultural exporters. Addressing the current problems with container availability and the location of equipment for exporters will require coordination among several modes of transportation and the agencies that regulate them.

My fellow Commissioners and I have recently met with Mr. Young Min Kim, the CEO of Hanjin Shipping and the new Chairman of the TSA agreement, as well as executives of other carrier members. I have communicated shipper grievances to Mr. Kim and, today, the TSA meeting in Taipei has reviewed our complaints and has assured us that these issues will be discussed in detail.

Just a few hours ago, I also received a message from Mr. Kim stating that members of the WTSA agreement are willing to meet in a forum in Washington on April 19th to discuss specifically U.S. exporter needs, with the FMC participating in this meeting.

In all our discussions, both with shippers and carriers, we have stressed the need to be "partners in recovery", as each is dependent on the other for economic recovery and growth. The Commission will continue to serve as an honest broker between these partners, working to achieve the results that we all want.

I am also pleased to announce that on March 11th, the Commission unanimously voted to initiate a non-adjudicatory fact-finding investigation into the space and equipment shortages. The fact-finding investigation will be headed by Commissioner Rebecca Dye. She will conduct a full and fair analysis of the circumstances, explore ways in which the Commission can help resolve the current situation in light of our current limited ability and authority, and report results to the Commission along the way, with any recommendations of a policy or regulatory nature, as well as suggestions for any possible legislation that might be needed. We will be sure to keep the Subcommittee apprised of how the investigation is proceeding and we will be happy to share our report and recommendations when the investigation is complete.

Finally, the Commission has consistently reminded all parties that issues between individual shippers and carriers can be resolved with the assistance of our Consumer Affairs and Dispute Resolution Services Office, which specializes in resolving disputes through mediation and other alternative dispute resolution services. We encourage carriers and shippers alike to use these services.

Mr. Chairman and Members of the Subcommittee, thank you very much for the opportunity, and we look forward to answering your questions.

Mr. CUMMINGS. Thank you very much. I really appreciate your testimony.

Let me start off by saying that I do commend the Commission for launching an investigation into the conditions in our import and export trades in the shortage of capacity for importers and exporters. Mr. Lidinsky, as you may remember, we had a real morale problem at the FMC and people were complaining, and I can tell you that I have heard from a number of your employees who feel a lot better about things since you have been there.

Mr. LIDINSKY. Thank you very much, Mr. Chairman.

Mr. CUMMINGS. Apparently, you must have come in, working with Ms. Dye and others, to turn around that issue, and I do thank you. I think this kind of effort is something that certainly makes people feel good about what they are doing.

Mr. LIDINSKY. Exactly.

Mr. CUMMINGS. Because it shows them that they can have an impact, possibly. And I know that you haven't gotten into the research yet, but do you believe that the United States exporters are currently experiencing a lack of vessel capacity, and will that lack of vessel capacity affect the achievement of the President's goal of increasing the Nation's exports over the next five years? Further, could you explain how your fact-finding will help the current crisis, or how you think it might help?

Certainly, Ms. Dye, if you want to chime in, you are certainly welcome to do so.

Mr. LIDINSKY. Thank you, Mr. Chairman. First of all, let me say thanks again for your comment about the agency. As you know, I returned to the Commission after a short absence of 35 years, where I trained under Helen Bentley, so I am back at home. But I was struck by the fact that the same spirit and dedication is there, although the agency is half the size of what it was in those days. But it was just a matter of redefining our mission; it was always there and the Commission staff is energized on some of these issues and you are going to see real results from the Commission in the coming days. So thank you for that.

Now, as to the question of capacity, there is no doubt there is a capacity shortage and there is no doubt that it is hurtful for exporters. The carriers agree with that, the exporters agree with that, and, unless we get the situation fixed, there is no way that we will be able to meet the President's goals that he has stated.

Now, as to the fact-finding mission itself, I would like Commissioner Dye to respond to that.

Ms. DYE. Thank you, Mr. Chairman. This type of proceeding is well suited for this situation because it is not designed to assess fines or penalties, but to determine a factual situation upon which we may act. We have given ourselves a short time frame during which to complete an initial report because——

Mr. CUMMINGS. And what is that time frame?

Ms. DYE. June the 15th.

Mr. CUMMINGS. June the 15th you plan to have finished your report?

Ms. DYE. An initial report.

Mr. CUMMINGS. Initial report. Okay.

Ms. DYE. Because we wanted to make sure that if there is something that we could do to remedy this urgent problem, that we identify it now.

Mr. CUMMINGS. Right.

Ms. DYE. And not in a year.

Mr. CUMMINGS. Well, you know, when you said that, that automatically made my ears perk up, because you know I love deadlines. I love them, because there is no way we can measure things unless we have timetables and deadlines, and that is why we are going to have a hearing.

Ms. DYE. I knew you were going to say that. And I will take that challenge, Mr. Chairman.

Mr. CUMMINGS. Okay. We are going to figure out how we can have that hearing sometime after June 15th, but no later than July 15th. We just have to look at the schedule. Because we want you to come back so we can see where we are on that. And I do appreciate your saying that, because things can go on and on and on.

And as I told a group of mariner folks yesterday, I said that when it comes to business decisions, business people need decisions. The last thing they need is to be trying to predict what is going to go on. They either need to hear a yea or nay, and then they can move on and do what they have to do. So it would be good for us to begin to look at it. But go ahead.

Ms. DYE. Yes, sir. And we may have matters that we need to consider further, and, of course, that will be for the Commission to determine, if we wanted to extend the deadline for any particular assessment. But the Commission had looked into this matter in the summer of 2008.

Of course, in the fall of 2008 everything changed for the entire global economy. But I am pleased to look into it again for the benefit of our American importers, and certainly we don't want an exporter who has anything to sell on the global marketplace to lose a sale for lack of transportation.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Were you finished? Has the Commission received reports of container shortages? Do you all receive those kind of reports?

Mr. LIDINSKY. We do, Mr. Chairman. We receive them in direct complaints from shippers that have been deprived of containers. We also have several services that we use, economic experts who give us weekly reports of container shortages.

Mr. CUMMINGS. And do you know whether lines have been cutting export shipments so they can ship empty containers back to Asia?

Mr. LIDINSKY. Well, we have heard reports of that, and this is a shipping pattern that is not new to this crisis, because lines will be dedicated to a particular service and require the movement of empties. Now, empties have to move or cargo comes to a stop. But we have had, in recent weeks, accelerated reports of cargo shortages, particularly on the West Coast, of container capacity.

Mr. CUMMINGS. Now, do you believe that FMC has all of the legal authority it needs to address the problems faced by U.S. exporters regarding current container capacity?

Mr. LIDINSKY. Well, we do at the moment, and we would hope that Commissioner Dye's study would point to where we might be short on that. But at the moment we feel we do have adequate authority.

Mr. CUMMINGS. Just one more thing, then I will come back after Mr. LoBiondo finishes. Has FMC ever ordered more capacity of vessels or more containers into trade or to a part of the United States?

Mr. LIDINSKY. We have not, Mr. Chairman, and the reason for that is that in the decision-making process of the Commission, we don't micromanage companies in terms of what they have to do in terms of containers or vessels. Now, theoretically there could be a complaint brought, there could be a proceeding, an investigation where that might be a remedy, but it has never happened before in the history of the Commission.

Mr. CUMMINGS. So, in other words, you have the authority to do it. Do you think you have the authority to do that?

Mr. LIDINSKY. I would defer to our legal counsel in that.

Ms. FENNEMAN. Thank you, Mr. Chairman. I think it would be a very close question of a matter of fact. If, for example, the Commission found that carriers were coordinating their services in a way, under a filed agreement, that would violate the standards of

Section 6(g) of the Shipping Act, the Commission could order a remedy, which would be the dissolution of this kind of collaboration.

And, necessarily, probably what would happen was each carrier would have to put in its own capacity and, thereby, capacity would enter the trade. But, of course, I don't believe, as a particular remedy, the Commission could order specifically that containers be placed or capacity be placed in a trade.

Mr. CUMMINGS. Thank you very much.

Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman.

Sort of following up with this container problem, do shippers have the ability to identify and locate empty containers that may be available to exporters?

Mr. LIDINSKY. That is a tough situation, Mr. LoBiondo. Larger shippers do. Larger shippers are very often in contact with not just the carriers, but with NVOCCs, other equipment suppliers, container leasing companies that do have access to empty containers. So each shipper, each exporter has to fashion their own export strategy, but there is no central repository to come to in order to say here are 500 containers sitting in Newark or 600 sitting in Baltimore. That does not exist.

Now, the USDA has held meetings with us to try to talk about such a system, particularly for agricultural exports, and those talks are in their early days. But that is the gist of what they would like to do.

Mr. LOBIONDO. Does your agency, can your agency come up with a plan to help facilitate, bring that into reality for identification of where the empties are?

Mr. LIDINSKY. I would think that would be an achievable goal that we could work on, but I would defer to Commissioner Dye on that question.

Ms. DYE. Yes, Mr. LoBiondo, that is the type of thing I think that, those type of solutions exactly that we are looking for; and if we can be a facilitator in that matter, that is something that we will consider. I think it is appropriate for this fact-finding.

Mr. LOBIONDO. So that would be something you will be looking at between now and June 15th?

Ms. DYE. Yes, sir.

Mr. LOBIONDO. Okay.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Let me just go to a few other things. Mr. Lidinsky, you indicate that you and other commissioners have personally met and expressed our concerns with Mr. Young Min Kim, the CEO of Hanjin?

Mr. LIDINSKY. Hanjin, yes.

Mr. CUMMINGS. Hanjin Shipping and new Chairman of TSA, as well as executives of other carrier members, and you communicated a number of grievances we have heard from shippers. What response did you receive and did Mr. Kim or other executives with whom you met specify the actions they would take in response to the concerns you raised?

Mr. LIDINSKY. We have had a very encouraging response, Mr. Chairman, and each carrier company, each agreement that we have met with acknowledges there are problems and, as I mentioned in my statement, that it is not unusual to see, the day-to-day shipping process is not a science, it is an art. If it was a science, we would have all trades perfectly balanced with no container missing.

I worked for 20 years for a container manufacturer and supply company, and the toughest aspect of that is getting it right between the carriers and the shippers. So it is not easy, but I am very encouraged and I think our fellow commissioners are very encouraged by the response that we have had from Mr. Kim and others; and this meeting that we will have in April with the exporters and carriers is going to be very important to bring this thing into focus and to do what both sides have to do to get the job done.

Mr. CUMMINGS. Now, you indicate that the Commission staff recently met with the Department of Agriculture staff and the WTSA in an effort to develop an information system that would enable agricultural shippers to identify the locations of available empty shipping containers. What is the outcome of the meetings and will a container information system be developed, and when will it be online, and how do you envision that working?

Mr. LIDINSKY. Well, the meetings are still going on in progress, but the USDA envisions such a system as you describe. Now, I can't give you any deadlines today as to when it might be finalized or what would be the reality of it, but agricultural exporters are in a much more difficult position than regular exporters, of course, because they have crops, which at times are unpredictable. They can't give a date certain, very often, for moving of the goods, moving of the grains and different things.

So we would work with USDA, and what we envision is that the carriers would work through a central registry to report empty containers in this region or that region so that the agricultural shippers can hook up with those empty containers and move to port.

Mr. CUMMINGS. I know it is a difficult problem to address, but do you have any idea of when you think you might be able to have it resolved? I am not trying to hold you to a date.

Mr. LIDINSKY. Well, I would think that in the context of Commissioner Dye's fact-finding and going to two or three more meetings with USDA, I would certainly look at a summer time frame to see whether this plan is feasible or not, and what we would need to bring it about.

Mr. CUMMINGS. Ms. Dye, that is such a major problem. I hope that that will be, I am sure it already is, on the top of your list, trying to figure that one out. Staff just told me that we will be able to hold that hearing on July the 2nd, so that gives you an additional 17 days beyond your self-imposed deadline, by the way. But I just think that is very important to our agricultural community.

The carrier cartels indicate, Mr. Lidinsky, that their announcements are non-binding on members; however, a witness on our second panel has written in his testimony that there is not much variance among the actions taken by cartel members. What assessments do you undertake to compare the actions of cartel members and what results have you found?

Mr. LIDINSKY. Well, I would defer to counsel, but I would say that we very carefully look at the minutes of each of the agreement groups; we then follow up by our own field representatives observing in various ports what is happening, economic reports, studies that indicate any kind of activity that might be outside the scope of the approved agreement.

I would turn to Ms. Fenneman for any additional remarks.

Ms. FENNEMAN. Mr. Chairman, if I can just add. Our Bureau of Trade Analysis closely monitors all filed carrier agreements and their impacts. Depending on the authority of the agreement, there are different levels of monitoring and minuting requirements, with the agreements that discuss rates particularly having the highest scrutiny of monitoring. Other agreements are monitored as well for their activities with regard to capacity, deployment, and other activity. We have a team of economists that watch for particular effects as well as to predict likely effects of these agreements that are filed with the Commission, so they are closely monitored.

Mr. CUMMINGS. And how many challenges has the FMC brought against an agreement filed with it on the ground that they are anti-competitive since enactment of the Shipping Act of 1984?

Ms. FENNEMAN. There has been one such challenge.

Mr. CUMMINGS. And what type of matters has the Commission addressed in past fact-finding actions?

Ms. FENNEMAN. In past fact-finding actions, the Commission has addressed a wide variety of matters, but several had to do with the coordinated activities of carriers. In the past we have had fact-finding proceedings concerning particularly the Transpacific Stabilization Agreement and its activities with relation to service contracting, how they treat their shippers, whether they are acting in a coordinated fashion to discriminate against certain types of shippers and those sorts of matters.

We have looked, in the past, at particular trade lanes and we have looked at particular commodity issues. There have been a wide variety of fact-findings. Some have resulted in settlement agreements, some have resulted in further enforcement action, and some have not resulted in any further action. So there is a wide variety of outcomes that we have seen from fact-findings.

Mr. CUMMINGS. Just one last question before we get to Mr. Larsen.

What legal authority does the FMC have to further deregulate international shipping, such as eliminating tariff filing and publication requirements?

Ms. FENNEMAN. The Commission has quite broad authority under Section 16 of the Shipping Act to deregulate where it finds that no substantial harm to competition or unreasonable detriment to commerce will result. So it has quite broad authority to deregulate under the Shipping Act.

Mr. CUMMINGS. Mr. Lidinsky, just a few more things. I understand Mr. Larsen doesn't have any questions of this panel.

What percentage of United States exports move under contract versus under common carriage agreements? Do you know that?

Mr. LIDINSKY. I would supply the Committee with the exact number, but my feeling, Mr. Chairman, would be the vast majority are moving under contract.

Mr. CUMMINGS. And to what extent do you believe that ocean common carriers are colluding in setting the rates that are being charged even under confidential service contracts, and what impact is such collusion having on prices?

Mr. LIDINSKY. Well, I would answer the question this way, Mr. Chairman. I think the service contracts that came out of the 1998 Ocean Shipping Reform Act have been a tremendous success. There are over two million of these contracts filed, and I think that most individual shippers feel that they are negotiating one-on-one with the carrier, with the service that they are involved with. If there was any evidence of any kind of collusion or any kind of anti-competitive activity, any kind of excessive negotiating power over the shippers, we want to know about it and we will act to stop it.

Mr. CUMMINGS. Very well.

Mr. LoBiondo, did you have anything else?

Mr. LOBIONDO. No.

Mr. CUMMINGS. Again, I want to thank you all for being here. Mr. Lidinsky, I do plan to visit the agency to talk to the employees.

Mr. LIDINSKY. Very good, Mr. Chairman. You are most welcome. We will work out a date and Commissioner Dye wrote down that July 2nd date, but drew some fireworks around it for the 4th.

[Laughter.]

Mr. LIDINSKY. That will keep her focused.

Ms. DYE. We look forward to it.

Mr. CUMMINGS. I look forward to seeing you all. Thank you very much.

Mr. LIDINSKY. Thank you, everyone.

Mr. CUMMINGS. We will now hear from our second panel.

The second panel is Robert F. Sappio. He is Senior Vice President, Pan American Trade with APL Limited; Chris Mullally is President of the Mohawk Trading Company; Hayden Swofford is the Executive Director of the Pacific Northwest Asia Shippers Association; and Michael Berzon is President of Mar-Log Inc. and Chairman of the Ocean Transportation Committee of The National Industrial Transportation League.

I want to thank all of you for taking time from I know what are extremely busy schedules to be with us this morning. We will hear from Mr. Sappio first.

TESTIMONY OF ROBERT F. SAPPIO, SENIOR VICE PRESIDENT, PAN AMERICAN TRADE, AMERICAN PRESIDENT LINES LIMITED; CHRIS MULLALLY, PRESIDENT, MOHAWK TRADING COMPANY; HAYDEN SWOFFORD, EXECUTIVE DIRECTOR, PACIFIC NORTHWEST ASIA SHIPPERS ASSOCIATION; AND MICHAEL BERZON, PRESIDENT MAR-LOG INC., CHAIRMAN, OCEAN TRANSPORTATION COMMITTEE, THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. SAPPIO. Mr. Chairman, I have a written statement that, with your permission, I would like to submit for the record.

Mr. CUMMINGS. So ordered.

Mr. SAPPIO. And I have some material that I would like to use, use that material to summarize some remarks, sir.

Mr. CUMMINGS. Very well.

Mr. SAPPIO. Good morning, Mr. Chairman and Mr. LoBiondo. Thank you for giving me an opportunity to speak with you today.

My comments today are from an ocean carrier's perspective, from APL's perspective. I am not representing other carriers; I am not representing other carrier groups. And my appearance today is part of APL's ongoing efforts. My company has been a leader in trying to have more transparency and more engagement with our shippers, our shipper groups, and regulators like the Federal Maritime Commission.

APL, American President Lines, is the fourth largest container shipping company in the world. We are 160 years old, and 160 years we have been a U.S. flag carrier. We have 146 ships deployed in global trade, 20 of which fly the U.S. flag. We employ 640 U.S. merchant seamen. Since before World War II, we have served our Nation proudly in peace and in war. I have been with APL for 28 years, and I am very proud of our industry. I am very proud of my company's history and legacy.

We are emerging from two years of truly unprecedented events in the global economy that has impacted global shipping. Historically, global shipping grows at about 10 percent per annum. In 2009, containerized imports to the United States were down by 15 percent. We have never seen anything like that before. Exports were down just a little bit, about 1 or 2 percent.

At the same time, carriers had been taking in the delivery of new ships to keep up with customer supply chain needs, so there was a disequilibrium, if you will, in terms of demand for container space and too many ships.

During that time, also, I would like to point out that the price of fuel doubled, from $250 a metric ton to nearly $500 a metric ton. So ocean carriers, frankly, were facing a perfect storm.

My company lost $750 million, the largest loss we have ever posted, and the industry lost upwards of $20 billion.

We had no choice but to take action, unprecedented action, and carriers moved quickly to try and reduce costs. We did lay up ships and we idled capacity because, frankly, in 2009, there wasn't enough cargo moving to fill that capacity.

What we are seeing now, however, sir, is late in the fourth quarter we started to see a rebound in U.S. exports, and in the last eight or ten weeks we are seeing some light at the end of the tunnel on U.S. imports. U.S. imports are growing for the first time in over a year.

I think also what exacerbates the problem with the U.S. exports is that for agricultural products, which is a big driver of U.S. exports, historically, only 1 or 2 percent have moved on container vessels. Lately, in the last couple of years, 10 percent have moved on container vessels, and they have moved away from bulk ships. These bulk ships have left the U.S. trades and gone to foreign-to-foreign trades, from Brazil and Australia in and out of China. So that has left the U.S. exporter a little bit in a lurch, and the container companies have come in and, frankly, provided a solution.

There are structural issues in the trade that really are beyond the control of shipper or carrier. We bring in 12 million TEUs into the United States from Asia and we only export 6 million. There is an imbalance in the trade. Where the cargo wants to go to. Imports want to go to consuming locations, metropolitan areas, where the people are, because we import consumer goods. Exports from the United States, the largest export from the United States is waste paper. The second largest is scrap metal, followed by things like agricultural products. They come from more rural areas. So there is a need for containers, frankly, where they don't necessarily go to.

Also, the weight is different. You talked about moving empty containers. We have no choice but to move empties because we can only carry back half as many exports as we put on a ship coming in. The average weight of an inbound container is 10 metric tons; the average weight of an export container, because of raw material and its lumber and scrap metal and waste paper, is over 20 metric tons. You deadweight out the ship. And we also have to move empties back so the empties are available for importers like J.C. Penney and Sears and Target to move their products to market.

We acknowledge there have been some shipper complaints, and we acknowledge that there have been some container shortages, and this is not unusual. But we believe that as demand comes back and as we recover from 2009, and as rates begin to go to compensatory levels, carriers will be able to reimplement capacity and alleviate this shortfall. We also want to continue our engagement with our customers.

We are going to have a meeting here on the 19th of April. It is one of many meetings we have had in the last three years, frankly, under my company's leadership and working hand-in-hand with the FMC to hear directly from shippers and to try and reach a better understanding between both parties.

Thank you very much.

Mr. CUMMINGS. Thank you.

Mr. Mullally?

Mr. MULLALLY. Mr. Chairman, Members of Congress, thank you for allowing me to speak here today. The reason I am here today is because I am basically at the end of my rope. Situations that have occurred in recent times with exporting my product, which is cattle hides, a $2 billion and valued product from the United States annually, has just become impossible.

And while there is much talk at this table about the problem with getting enough containers, I would like to say that the bigger problem is even when we can get these containers today, we can't get them on a ship. I cannot ship my product to the customers who have bought it. The delays have become tremendous. The customers are complaining they cannot manufacture their goods overseas from the goods they depend on from my raw material.

Basically, the fact is that exports are not the priority for the shipping companies, and that needs to be said. We are second. The exports of foreign companies to this Country are the priority.

Vessel capacity is definitely insufficient, and now we have to plan our shipments four to six weeks in advance, whereas, before it was just one or two weeks. And while you may think that is not a big deal—and it isn't; we can plan that out—what is happening is that the space reservations that we make for these vessels are being canceled at the last moment.

Case in point, on February 22nd I had bookings or shipping space reservations made with one shipping company I have been doing business with for more than 12 years, and they just sent us an email that all of those bookings were canceled. We had already made these bookings weeks in advance, planned it out for four to six weeks in advance. We did what we were supposed to do and reserved the space, and the carrier just decided that we couldn't have that space anymore.

In the current shipping environment, there is nowhere for me to go because everybody else has a full ship. So, essentially, they blew a big hole into my schedule and I was unable to do what I said I was going to do.

As a businessman, I fully understand the needs of the carriers to make revenue. I also need to make revenue. The problem is you cannot wreck other people's businesses to save your own. That is just wrong. And this carrier that I was working with had been moving this same cargo for us weekly for the last 9 and 10 months, and suddenly they were not going to take it anymore. It left me in a devastated position.

The booking reservations that we make have no meaning, and that is a problem that needs to be solved, because with any other industry, any other business, when you make a reservation and the day comes for that reservation to take place, you have that reservation. But that is not true in the shipping company booking system.

Basically, even if we can get a container and we can keep our space reservation, our cargo gets to the loading port and we only find out two days after the vessel sails that they left it behind or they left part of it behind and they can't even tell you when they are going to ship the rest of it, even though it is loaded and sitting at the port.

But we are not consulted about that whatsoever. And I have asked carriers for years and years, please, just call us, because sometimes, if you need to cut our cargo, there may be three other containers that we would rather have cut than the three you chose, or, when you split our shipments, it creates a lot of problems also, because we are an agricultural product; we need to have documents signed and issued by the USDEA. A lot of foreign governments require them to be signed prior to sailing, not after, and when they have to be reissued, we run into these situations where the dates can't match up and it becomes an importing problem for our customer in the foreign country.

So essentially there is no more reliability in the shipping industry. I have been doing this for almost 30 years, and the reason I came here today, truly, is because I don't know what to do any more. When that shipping company canceled my booking reservations for all 75 of those containers, I literally begged them, please do not cancel all of them; I need to ship at least something to my customers. Please, just cancel half if you don't have the space. They wouldn't do it. Didn't even want to hear it.

The problem is that I don't understand how I can reserve the space and I can plan it out, but they can't. It is their ship. They know how much fits on it; they know the weight of my commodity and all the other commodities. If you take that reservation, why can't you keep it? That is the big problem. We cannot ship our products. We compete with other people in the world. If they cannot buy my product, they will buy it from Brazil, they will buy it from Australia, they will buy it from South America.

Mr. CUMMINGS. Thank you very much.

Mr. Swofford.

Mr. SWOFFORD. Mr. Chairman, thank you very much for inviting us here. I am pleased to speak before you and the Committee. I would like to thank Mr. Larsen, my congressman, for attending today; I appreciate that very much. Mr. LoBiondo, I appreciate your being here as well.

I can only reiterate what Mr. Mullally is saying about the circumstances he is up against and what he has to deal with. I work with a shippers association; we are 16 members. We are fairly small shippers as individuals, but as a group we represent a fair amount of cargo that has moved.

I can tell you a story about one of our members. I had a couple things here, but it is a smaller member who ships and has struggled for years to gain a foothold in the export market and has finally been able to develop strong relationships with foreign buyers for his lumber products. And as things go, he goes along and makes his space reservations six weeks in advance to sailing, and he has to go through all the processes of procurement of the material, purchasing it from the supply source. His buyer will then go out and, of course, arrange for the financing and make sure that the terms of that sales transaction is ready to be completed.

We have come into cases very often where that booking or space reservation, sometimes the day of or two days prior to the sailing of that vessel, is canceled. He is out of business that week. That represents his income for that week, that shipment, and that carrier arbitrarily has canceled that with no remedy or recourse, and there will be no space for him to go back to try to re-book that cargo to get on a vessel for six weeks, which is the first time the carrier will open up new space for new sailings.

It is an untenable situation for us to deal with as exporters in this Country. But it is not just exports, it is the imports as well that have them. Some of our members will import, and they cannot get their goods onto vessels at foreign ports to bring them in. Capacity has been over-reduced and is far below what our needs are to conduct the commerce of the Country.

I have to admit that while Mr. Sappio here said he is proud to be part of APL, they are a Singapore-based carrier, and they may have some U.S.-flagged ships under their management, but they are not a U.S. merchant marine carrier any more. And Bob also mentioned fuel prices doubling, but he failed to recognize the fact that the cost of the fuel has been passed on to the shipper. Our rates, our rates will have an ocean freight rail and it will have a fuel charge as well, so we are helping them pay for that variable cost on every container that we ship.

Since July of last year, we have also faced five rate increases that we have had to deal with, and mostly these increases come in a short period of time. In my written testimony I explain to you the sales cycle that we deal with; it is usually about a 90-day cycle from the execution of a sales agreement between the buyer and the seller, and then we manage to go out and procure the goods and get them ready for shipment, the reservation is made to actually execute that shipment, and under the current maritime law rate increases can take place 30 days in advance to the time that rate is to take place.

Well, that 30 days short-shifts our shippers and our exporters because the execution of that contract, that sales agreement has already been in place, and somebody has to make that adjustment. The buyers are unable to do that because their financial instruments are already in place, and most of our business runs on letters of credit, and once those are issued, the terms are usually inalterable. They may be amended sometimes to allow for changes in shipment dates, but that is very difficult and costly. So the exporter then absorbs that rate increase.

I have been working with carriers for quite some time, saying give us some predictability so we can work this into the sales cycle and make this work and pass those on to our buyer. For the most part the carriers have a deaf ear; they really don't care. There are a few that are willing to work with us and say, well, we will help you in this regard. And I will admit APL is one of those that understands the cycle, but, for the most part, of the 15 major carriers that are all foreign-owned, foreign-flagged carriers, they really pay no attention to what our needs are that way.

Thank you for the opportunity to speak. I appreciate it.

Mr. CUMMINGS. Thank you very much.

Mr. Berzon.

Mr. BERZON. Thank you, Mr. Chairman. Good morning. I am Michael Berzon and I am here today representing the National Industrial Transportation League, the Nation's oldest and largest association of companies engaged in freight transport. As a member of the League, I served as the Chairman of our Ocean Transportation Committee, whose members are concerned with the transportation of goods via vessel carriers, including liner carriers regulated by the Federal Maritime Commission. We have submitted a formal statement and I would ask that it be included in the hearing's record.

The League is no stranger to the issue of international shipping and the oversight of the industry by the Federal Maritime Commission. We were actively engaged in past reforms of U.S. international shipping that led to the adoption of the Shipping Act of 1984 and, more recently, the Ocean Shipping Reform Act of 1998, or, as it is commonly referred to, OSRA.

The reforms brought forth by OSRA, most significantly the introduction of confidential contracting between liner carriers and shippers, and later with third-party intermediaries, have resulted in commercial benefits for both carriers and their customers, as well as improved working relationships between them. Despite these significant statutory and regulatory reforms, we do not believe it is appropriate to stand on the sideline admiring past accomplishments.

Ocean liner carriers still engage in collective discussions regarding supply and demand, as well as establishing benchmarks for rates and surcharges for the U.S. trades through carrier organizations known as Discussion Agreements. The deep economic recession this past year has impacted both shippers and carriers. Both have had to control costs and adjust their operations in response to a decline in freight volumes.

It should be noted that, during this downturn, the carriers, through one Discussion Agreement known as the Transpacific Stabilization Agreement, or TSA, in early 2009, sought authority from the Federal Maritime Commission to expand on their filed operating agreement to permit collective discussion and coordination over utilization of inbound vessels by approximately 85 percent of the market participants.

It was and is the League's view that the TSA proposal for collective discussion would have permitted carriers to substantially reduce capacity in a concerted fashion. That action would in turn artificially decrease service options and increase transportation rates.

After further inquiries from the FMC regarding the TSA's plan, the TSA ultimately chose to withdraw its proposal. Nevertheless, its Chairman, Ronald D. Widdows, stated at that time, "TSA members remain convinced that today's unprecedented trade conditions justify exporting a coordinated approach to operate more efficiently."

The League is in total disagreement with this philosophy and believes a continuation of limited antitrust immunity for Discussion Agreements to engage in rate and service options is a barrier to achieving an even more robust, competitive, and efficient maritime industry.

Since the TSA's withdrawal of their request for authority to manage capacity, shippers are seeing higher price increases to carry their goods, and these increases are noted in our prepared testimony.

While we recognize that this is the result of a higher demand for space against a substantial reduction in capacity, shippers generally believe that these terms should be determined by each individual carrier rather than through a Discussion Agreement.

It should also be noted that in the call for this hearing, we requested several shippers to ascertain whether they would be available to publicly share their recent operational experiences with carriers regarding prices, capacity, and services. Without exception, all declined. The March and April time frame of every year marks the period that most shippers and carriers normally begin negotiations for the new contract period, typically beginning on May 1. The delicate nature of these commercial discussions presents an enormous incentive at not upsetting these talks through a public dissemination.

Additionally, the League applauds the recent announcement of the FMC to review the impact on U.S. trade from the decision taken by European officials to eliminate the ability of carriers to fix prices in that regime's international trades. While that review takes place, we would like to note that, unlike the U.S., European regulations have never permitted Discussion Agreements to operate in their respective international liner trades. It is our belief that the European system presents a more market-based environment than the U.S. and, as a result, the system provides European companies a distinct advantage over their U.S. counterparts.

In conclusion, while the economic recession has been hard for both carriers and their customers, the reduction in vessel capacity in the Eastbound Transpacific Trade has made it difficult for the supply of space to meet the upturn in demand. Moreover, in today's economic environment, the recent pricing practices of TSA members are straining the commercial relationship between shippers and carriers.

Mr. CUMMINGS. Thank you very much.

Let me say this from the outset. We have three votes, so we are going to start our questioning and then we are going to have to come back, and we will see how far we can get.

Mr. Swofford, you indicate that if there was sufficient space and equipment, that members would be able to ship 15 to 20 percent more containers than last year. What efforts have you undertaken with carriers to secure additional space and if you have approached carriers, what responses have you received?

Mr. SWOFFORD. Thank you, Mr. Chairman. I have spoken to every carrier that we deal with, and even those that we don't have direct contracts with, trying to gain space allocations or regular space on every sailing out of the Puget Sound, where we have experienced a 45 percent decline in our capacity since September of last year. To a carrier, they have all stated we can't do that; we don't know how to do that; we can't give you allocated space; you will just have to go ahead and continue to book as you do; we can't guarantee you anything.

In the meantime, just yesterday, while I was traveling here, one of our members said we have a facility that if we can find space, we can book another 100 containers a month going to foreign markets, and utilize and bring this facility online and employ 90 people full-time in the production of lumber. But if we can't find space, if you can't tell me there is a carrier available for me to ship this, we are not going to enter into an agreement with this mill to produce the lumber that we need to have.

Mr. CUMMINGS. I am going to yield my time to Mr. Oberstar, the Chairman of our full Committee, then we will go to Mr. LoBiondo.

Mr. OBERSTAR. Thank you, Mr. Chairman. I will take just a moment. I was delayed at a meeting of cities this morning. But this hearing is very, very timely and very important, and I appreciate you and Mr. LoBiondo getting together on it and the interest of our members, but also of the shipping public.

The President announced a national export initiative, but at the very time he is putting an emphasis on exports, there aren't enough vessels and apparently not enough containers available to move those exports. We have had rising numbers of reports about a shortage of containers in the inland areas of the United States; cargo being rolled over for weeks; cargo sitting on the docks, some of which we have heard this morning.

And concurrently with that is the decline of the U.S.-flag fleet. When I was elected to Congress in 1974, we had hearings in the Merchant Marine and Fisheries Committee on the status of the U.S.-flag fleet, and in that same time frame I notice in the audience is Helen Delich Bentley, who was Commissioner and was a Member of Congress and a very strong advocate for the U.S.-flag fleet. We had 800 American flagged vessels in 1975. That was down from 5,500 at the end of World War II and 25 million deadweight tons of shipping.

By 1975 we had 800 flagged vessels, we were eighth in the world, and that was dead last after the Polish Atlantic fleet or the Baltic

Atlantic fleet, the Polish fleet. And now, 35 years later, we have 83 vessels in the American flagged service. After millions of dollars in construction differential subsidies, operating differential subsidies, all sorts of incentives to keep the American flagged fleet going, and we keep falling further behind.

Our witness from the NIT League addressed the antitrust issue. I met on that matter just yesterday with a committee of the European Parliament, the Transport Committee, the European Parliament, and I pointed out to them the antitrust immunity in aviation is devastating, and so was it in maritime.

So these are issues we need to address and this hearing is a foothold on the future as Mr. Cummings, in his typical fashion, will be very aggressive and very engaged and pursue this matter to its fullest. We will have another hearing next week and we are going to continue pursuing these matters. America cannot lose its place in world shipping. But we certainly are falling ever further behind. We need to find ways we can move ahead.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

It is good to see Mr. Swofford from Langley, Washington, a wonderful place in Whidbey Island. It is the first place both of us would rather be, but this is the certainly the second place both of us would rather be today.

But continuing on a little bit from your testimony and from your written testimony as well, in your eyes and your members' eyes, would you characterize this problem as an issue of market demand, where there is increased market demand now that the market seems to be turning around, and it is outstripping the supply, that is, the supply of containers and vessels; or is this something that is structural in the market, where, despite increased demand, there will not be an increase in supply of vessels and containers to supply your members and other members, other shippers?

Mr. SWOFFORD. I think the best way to answer that, Mr. Larsen, is since last September we have seen carriers withdraw services from the trade, Transpacific trade. It started even before that. Currently, I believe there are over 500 vessels at anchor and lay up around the world that are unemployed, and they have done this in response, of course, to the economic downturn, and all the carriers coming into the United States, all foreign-flagged carriers predicate their services on the import market, not the export market.

As exporters, we have seen the reduction of our capacity severely, like I mentioned, in the Northwest by 45 percent, which impacts not just our ability to export, but it impacts all agricultural shippers' ability to export. I had the honor of consulting with the Minnesota Shippers Association several years ago and worked with their soybean exporters in trying to help them find ways to export their soybeans. One of the gateways was the Northwest, and that has virtually been withdrawn from them; they have to go through Los Angeles. We have had other occasions where, just recently, a carrier decided to suspend a service out of Seattle in order to move empties back to Asia, and we are losing those 800 containers that everybody relied on weekly.

So it is almost a false situation of supply for us. At the same time, our demand is up, the weak dollar is helping us find ways to export product and employ people, frankly, and we can't get the containers out. And it is not just empty containers, it is sheer capacity availability. We have had canceled bookings two days before we need to go. Like I mentioned, everything was in place, all things were in motion, and there is no way to replace that space that we have lost through an arbitrary cut of the cargo.

Mr. LARSEN. On that last point, do you have the top three things, the top three ideas that we ought to be considering, then, as a fix?

Mr. SWOFFORD. Well, our main—I will be honest with you, I really don't. But I think our main concern is that the carriers find a way to equalize their capacity to our demands. I have to disagree with Mr. Berzon on antitrust immunity. I don't think that the current circumstances allows for the communication between the customer and the carriers to be as large as it should be, because they would rather have their meetings as they have had for the last 100 years, in kind of a secretive situation and discuss with themselves industry circumstances than get to know their customers as well as they should.

There was a comment at a recent conference that I attended that who knew that everybody would be pushing their buttons at the same time to resupply inventories. I think anybody who spends time with their customers would have known that. And while we are searching for capacity out there, the carriers as a whole are reticent to find anything for us, to bring in any solutions.

We do see a little bit of things coming out that have been discussed that there may be more ships coming in May, but we hold our breath waiting to see that happen.

Mr. LARSEN. In response, Mr. Sappio, from the carrier side of things, what do you see as a fix?

Mr. SAPPIO. Thank you for your question, Mr. Larsen. I can't speak for all carriers, but I can speak for my company. We took capacity out in 2009 because the trade dropped 15 percent and because exports were down. That is why we took capacity out. The imports were down throughout all of 2009 and exports only began to recover in the fourth quarter.

This year we are starting to see a rebound in imports over the last 10 weeks. Ten weeks. We are seeing a rebound in imports. Is that rebound sustainable or not? Is the economy truly recovering or is it simply a restocking of very low inventories?

I talk to my customers every day. I spent time walking through my customers' warehouses in Southern California last month. Those warehouses are one-third full. Inventories have never been this low for U.S. retailers.

So the question, is do I over-correct, do I put back more capacity on the heels of a $700 million loss, or do I see if in fact there is a sustainable growth that would warrant the addition of more capacity?

Also, on the subject of rates, rates dropped last year 30 percent. The average rate for an inbound container from Asia to the United States dropped by 30, 35 percent; and exports rates dropped last year. It wasn't until the end of the year that we started to go back and talk to customers about rate increases. All the rate increases that are done are done on a voluntary basis. Every carrier is free to negotiate with each individual shipper any rate they want. It is voluntary and it is non-binding.

Also, with regard to service contracting, it has been 10 years, 12 years since the OSRA has taken effect and we have seen—frankly, I agree with Chairman Lidinsky—we have seen a wonderful success in carrier and shipper sitting down and negotiating individual contracts. But all too often, ladies and gentlemen, it has been, I will give you this many containers if you promise me this rate.

We haven't yet matured the process to talking about service specifics. Why is that? I personally believe it is because it takes too much time. It takes time for the carrier and the shipper to sit down and talk about forecasts, specific needs, specific equipment types from port to port, whether it be import or export. That is a lot of work. But, frankly, it is where the industry has to go.

Believe me, if my company could deploy more ships, we build ships not to park them; we build them to fill them with cargo and support the commerce of this Country.

Mr. CUMMINGS. The gentleman's time has expired.

We are going to have to go vote. We have one minute left, but the members are still 316 people who haven't voted, including us. So we will be back in somewhere around about a half an hour, probably a little less than that.

Thank you very much.

But ten minutes after the last vote, Members, we will be back in session. Thank you very much.

[Recess.]

Mr. CUMMINGS. Call the hearing back into order.

Mr. Sappio, Mr. Swofford wrote in his testimony that "Exports, while contributing some revenue to the carriers, was not and is not a motivating trade for the carriers." You wrote in your testimony that deployed vessel capacity is driven by import demand, and you explained that import rates, in effect, subsidize much of the cost of exports.

Does this mean that exports are essentially hostage to imports and that shipping economics are fundamental impediments to the achievement by the U.S. of a more balanced trade pattern?

Mr. SAPPIO. Sir, the facts are that because of some structural differences in the trade or structural facts that exist in the trade, imports pay more historically because they are manufactured goods, fashion goods, consumer electronics, and so forth; and the physical makeup of these goods is that they are light, so you can load a lot of them on a ship.

So in very simple terms, I can carry a whole lot of imports at a high price, and I can't carry physically, because of weight constraints, a lot of raw materials, or exports, which really only can bear a lower price. Historically, the price difference between an import box and an export box has been as high as $2500 per 40-foot container. Right now it is more about $1300 because rates have come down in both trades.

The fact remains that, for my company, and I believe for most carriers, the economics are such that the imports are going to drive the deployment of additional ships and containers. So we are going to have to see if import or inbound volumes increase and rates go to compensatory levels. Then we can redeploy capacity, which will alleviate the export shortages.

Mr. CUMMINGS. Now, you work for one of the last remaining U.S.-flagged container carriers. However, American President Lines is owned in Singapore, is that right?

Mr. SAPPIO. Yes, sir, we are owned by the NOL Group.

Mr. CUMMINGS. And do you think that the U.S.-flagged carriers should be more responsive to the needs of the U.S. economics, security in the U.S. manufacturers and exporters than foreign-flagged vessels?

Mr. SAPPIO. Sir, I believe that regardless of what flag you fly on a ship, a company has to be able to employ a vessel and make a proper return. So regardless if we had—if every one of our ships were U.S.-flagged ships or they were all foreign-flagged ships—and we have 20 U.S.-flagged ships out of the 146 ships we deploy—the economics are such that you simply have to be able to make a return. So the import cargo is important to allow to deploy capacity so you can carry exports.

Mr. CUMMINGS. And do you believe there is a shortage of containers in the United States?

Mr. SAPPIO. Sir, I don't believe that necessarily there is a shortage of containers in the United States. Frankly, exporters didn't have problem getting space and equipment last year. This year they are because there has been a rebound since the fourth quarter. The shortage of containers always exists, as I mentioned in my opening testimony, because inbound boxes go to consuming locations and most of the export boxes go for more rural locations. So there is some inherent imbalances in the system that exist.

I think once capacity is reintroduced, if the economics justify it, those shortages can be alleviated.

Mr. CUMMINGS. Now, have you ever heard of carriers leaving cargo on the dock? Have you heard of that?

Mr. SAPPIO. Yes, sir, I have. I have heard of carriers that roll containers and don't load containers to their intended vessel, and there are a lot of reasons for that. This is a complex operation. But, also, some of the reasons, as it relates to bookings, customers making bookings. A lot of customers book cargo and then cancel the bookings. When space is tight, a lot of customers book cargo with a number of shipping companies in the hopes that they are going to secure some ship, and then cancel those bookings. We call them ghost bookings.

So it is difficult. There is always a fall-down, so we know, as an example, that from Shanghai to LA there is generally about a 20 percent fall-down of cargo booked that actually materializes in loaded containers to go to the ship. So we over-book the ship, accounting for what is a historical fall-down. And we do the same thing on exports; we over-book the ship, knowing that there will be some fall-down, some shippers will cancel bookings.

We are not always 100 percent precise.

Mr. CUMMINGS. Mr. Larsen?

Mr. LARSEN. Earlier, before the break, I asked Mr. Swofford kind of for the top three things we could do, and for Mr. Mullally, based on your experience, I wanted to give you the opportunity to try to answer that question. Based on your experience, if there are three things that you think, from your perspective, in a vacuum, we can do?

Mr. MULLALLY. Thank you, Mr. Larsen. First of all, one of the things I think we could do—and it was proposed I think about two years ago from the export side—that there should be some kind of agreement between carrier and shipper of a penalty system for eliminating, for example, these ghost bookings, as we just heard, and versus, also, not supplying the space that you said you would.

We, as exporters, put that out there to the shipping community and it never went anywhere. So I think that that would still be some type of viable solution to at least guaranteeing both sides that, if we say we are going to do something, we are going to do it. Otherwise, there is a penalty for not doing it.

As far as the container shortage issue, there are many times, as we heard, that the loaded containers go to major cities, for example, let's say Chicago, and by choice, because there is not that many exports out of Chicago, many times the carriers will return all those empty containers on the rail all the way to the West Coast and put them on ships empty. Whereas, if they could just maybe send them to another city, for example, Kansas, Kansas City, I can load cargo from Kansas City in various places in Kansas, where the rural areas are, and I can use those containers.

So while there is a cost to ship it back to the West Coast, there is also a cost to ship it to Kansas City, and I just think that there should be some solution for that. Let's put them where we can use them, rather than just sending them back empty, because we need them. We absolutely need them.

And I think one thing that maybe this Government can look at is some incentives, maybe to the carriers for providing some support to shippers of agricultural products that are in hard-to-load areas.

Mr. LARSEN. Thank you.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you.

Let me just go to you again, Mr. Sappio. Do carriers that are members of a conference share data regarding their projections for the economy or container volumes?

Mr. SAPPIO. Yes, sir. APL is a member of two Discussion Agreements, the WTSA and the TSA, and we certainly share our forecasts, our economic outlook, if you will, for the trade, where we expect things to go, whether we expect trade to be up or down. Yes, sir.

Mr. CUMMINGS. Then while carriers can't jointly limit capacity, can't their sharing of economic and container volume data lead them to all limit capacity based on the same economic projections?

Mr. SAPPIO. No, sir, I don't believe that is the case. Carriers are in business, and certainly APL is in business—and I don't want to speak for carriers, but I believe it to be so—we are in business to build ships and move cargo. We are not in the business of limiting capacity. The sharing of broad economic data, the sharing of information around growth or lack thereof in various trade lanes around the world or U.S. foreign commerce is absolutely not something that leads to a restriction of capacity.

Mr. CUMMINGS. Okay.

Mr. SWOFFORD. Mr. Chairman, if I might interject. I was at a recent meeting between the carriers and the ITC in San Francisco, where the carriers were kind enough to share with us some of their projections that they had as far as export cargo was concerned. Their projections on this came not from the carriers themselves, as it turned out, but a third-party provider of this, and they were able to base what they are going to do as far as deployments and their allocations on this, and there were 35 exporters, I believe, that are members of the ITC there, and not one of them could agree with the small projections that they were making their decisions on as a group. And it was information that they were all utilizing to base decisions on.

All of us felt that we would be, at a minimum, 10 to 12 percent type of growth pattern on the exporter side and I believe their projection at that time was about 4.1 percent. So we can see there was a large dichotomy of opinion there based on what they were dealing with.

Mr. CUMMINGS. Mr. Swofford, how has the practice of repositioning containers within the United States changed over the past few years?

Mr. SWOFFORD. Carriers are reticent to move containers to anyplace other than where they end up, because it costs them a great deal of money. And from that point of view it is easy to understand that they don't want to move them to Kansas, because it will cost them several hundred dollars. But, at the same time, if they were moving that same container back to the West Coast, that would probably cost them a great deal more without any revenue in it.

Mr. CUMMINGS. So what regions of the U.S. have the greatest shortage of containers? I understand why it is, but which areas have the greatest shortage?

Mr. SWOFFORD. I am sorry, I am not able to answer that. I can tell you from my own experience that we have more space and equipment issues in the Northwest, but I have to believe that Midwest, those shippers, in particular in Minnesota or in Kansas or some other non-urban areas, all face similar problems.

Mr. CUMMINGS. Mr. Sappio?

Mr. SAPPIO. Thank you, Mr. Chairman. In my testimony I included a map of the United States and I showed where the major inbound destinations are for inbound cargo and where the major export origins are. Places like Los Angeles, New York, there is rarely container shortage. I wouldn't say never, but I would say rarely container shortages in those major locations.

But in the heartland of the U.S., in the farm areas, yes, in the Pacific Northwest, because we export more from the Pacific Northwest than we bring in to the Pacific Northwest. While it is a vibrant and important part of the United States, it is not the biggest consuming location, and we ship a lot more lumber and logs out of the Pacific Northwest than we do bringing in wearing apparel or e-goods. There are some chronic locations where there are container shortages.

My company spends almost $400 million a year moving empty containers around the world because we try to get containers to where the cargo is. If there are empty containers in the United States, I assure you I would much rather put a load of cargo in that that pays me some revenue than have to move it empty. But the fact is the trade imbalance, the structural imbalance doesn't leave us any choice but to have to move empty containers around.

Mr. CUMMINGS. Mr. Mullally or Mr. Swofford, have you examined the possibility of obtaining shipper-owned containers?

Mr. SWOFFORD. Mr. Chairman, yes, I have looked at that possibility. We happen to be in a position where there are leasing companies available to us who are willing to work with us on a very low cost or no cost basis. The other side of that, though, is that every carrier I have talked to about this—now, I haven't talked to APL, I admit, but every carrier I have talked to about this has said we are not willing to take shipper-owned containers, period.

So that is not a solution for us either short-term or long-term. It is a situation where they are going to move their own equipment and not somebody else's, even when they don't have equipment for us available.

And if I might take a moment to set the record straight, I wanted to apologize to Mr. Berzon. I misunderstood his comments concerning antitrust immunity. We are actually on the same page; we both feel that the antitrust immunity is a situation that should be taken a look at and should not be there any longer. It doesn't help us at all.

Mr. CUMMINGS. Mr. Mullally?

Mr. MULLALLY. Yes, Mr. Chairman. I don't have the opportunity to use shipper-owned containers for the product I ship.

Mr. CUMMINGS. Okay.

Mr. Berzon, and this will be my final two questions, the European Union has eliminated its block immunity for carriers' rate-setting activities. What has been the impact of this action on routes between the United States and the EU, and can you comment on what the impact of this action has been on carrier services into the EU?

Mr. BERZON. Thank you, Mr. Chairman. The elimination of the block exemption on the part of the EU has helped the shippers in Europe to compete much more favorably on negotiating with the separate ocean carriers than we have here in the United States. So that when it comes to let's call it fair trade, the EU does have an advantage over us here, and I think this is something that the Federal Maritime Commission is going to be looking into shortly.

Regarding the Transatlantic Trade right now, it is pretty much in balance, and what you find, for instance, with regard to equipment—and, Bob Sappio, if I am going off on a tangent, please correct me, but there seems to be enough equipment on both sides of the ocean to be able to keep the importers and the exporters on both sides happy.

Mr. CUMMINGS. Finally, do you believe, Mr. Berzon, that the carriers are colluding to limit capacity specifically so that they can charge emergency charges?

Mr. BERZON. Mr. Chairman, it certainly seems to be that way, and when we talk to shippers here in the United States—and as I mentioned in my oral testimony, we weren't able to get live shippers to attend here because of the fact that most of them are working on their service contracts at this point.

But we do have anecdotal comments from many shippers who are very, very concerned about the availability of equipment, and they also feel that there is collusion, and they get very upset when, all of a sudden, the contract rate which they have signed with an ocean carrier, the ocean carrier suddenly says, no, it is not that any more, it is this, much more. And that does not happen only with one carrier, but it happens, from what we are told, with several.

Mr. CUMMINGS. Now, in fairness to Mr. Sappio, Mr. Sappio, you look like you are getting ready to leap out of your seat.

Mr. SAPPIO. Thank you, sir. I appreciate your letting me speak.

Mr. CUMMINGS. I am very observant.

Mr. SAPPIO. Mr. Chairman, thank you for being observant. Sir, frankly speaking, the current regulatory regime has absolutely nothing to do with the problem our shippers are experiencing right now. Absolutely not. And, frankly, the block exemption or the elimination of the block exemption in Europe is interesting. It is something that should be studied and requires further review.

But it is one year old, and it doesn't mean just because Europe did it the United States should rush to follow them. In the last year, there has been more disruption and volatility in prices and service in the European trade than ever before, when they allowed conferences or Discussion Agreements. And in my discussions with shippers, what they want most importantly, whether they are importers or exporters, is predictability of service and predictability of rate, and that can be gotten at by carriers working together and working hand-in-hand with our shippers.

On the point of collusion to keep space out, we have no authority to agree on or implement any space capacity under the Discussion Agreements, TSA, and WTSA. Those meetings are minuted, they are under the auspices of the Federal Maritime Commission and Council, and we do not collude to keep capacity intentionally out of the trade.

Mr. CUMMINGS. All right, we are going to close the hearing now, but let me say this. First of all, let me go back to the first panel.

Mr. Lidinsky, and to Ms. Dye and to counsel, I want to thank you all, first of all, for sticking around. What we see too often is that the first panel comes on, then they leave, so they don't stick around for the testimony. And considering this is something that you are getting ready to look into, it is helpful that you are here, and I thank you for doing that. And I mean that.

Second, I hope that you gentlemen, I don't know exactly how Ms. Dye's investigation will go, but you all have said a number of things here that might be very helpful to her. I would urge you to make sure that she has your comments, because I think they may be helpful in her coming up with a balanced investigation and one which is thorough, because we want to be effective and efficient.

Finally, let me remind all of us, as I say quite often, we are all for the home team. We are all just trying to make things work well so that we can make sure that our exports are at the highest level they can be and that we are doing everything right and we are doing things in an effective and efficient manner. So the one thing I love about being the Chairman of this Subcommittee—and I told Congresswoman Bentley this many times—is that it seems that just about everybody wants to get something done and they want to get it done right. So I think we need to just make sure that we go in with that attitude.

Now, one last thing. Mr. LoBiondo had asked unanimous consent that the National Retail Federation have 15 days to submit a statement for the record of today's hearing. There is no objection to that, so that is so ordered.

Finally, let me say this, that we really do thank you all for your testimony. We will come back here on July 2nd and see where we are.

Now, Ms. Dye, I understand that you are talking about a possible interim sort of report, so I got that. I don't want you to think that I didn't hear you. I did. But I think it is very important that we measure our progress. So I look forward to that.

And, again, this is an opportunity where we all can play a part in coming up with a solution to a difficult problem, so again I thank you and have a great day.

[Whereupon, at 12:22 p.m., the Subcommittee was adjourned.]

Talking Points for T&I on Exports

March 15, 2010

- Thank you, Mr. Chairman and thank you for holding a hearing on this important issue.

- Mr. Chairman -- exports create jobs.

- In my home state of Washington, exports drive Washington State's economy, accounting for over 30% of economic growth over the past decade.

- In fact, one in three jobs in Washington is tied to trade.

- Recently, I toured a small business in Monroe, Washington in my district called Research International.

- Research International has over 20 employees. It specializes in optical chemical and biological sensing, micromachining, and miniature rechargeable battery technology.

- They currently export to several European countries and Japan and are working with the local Export Assistance Center to expand to China, Taiwan, and Russia.

- If Research International can begin to export into these new markets, they're going to be hiring more people and creating jobs right here at home.

- When Washington state businesses export, they create jobs here at home.

- Promoting exports also helps our farmers.

- Every $1 billion in agricultural exports supports more than 9,000 jobs and generates an additional $1.4 billion in economic activity.

- In 2008, Washington farmers exported over $6.5 billion worth of food and agricultural products – including dairy, fresh fruits and vegetables, and meat -- becoming the third largest exporter of food and agriculture products in the U.S.

- I support the President's to double US exports in the next 5 years and create 2 million new jobs from exports.

- This effort to coordinate and focus federal resources on helping small and medium size businesses export is good news for Washington state and my Congressional district.

- However, as we look to increase exports and create jobs here at home, it is imperative that we have the infrastructure and the delivery capacity to deliver these products all over the world.

- Capacity limitations could have a significant impact on the ability of Washington state farmers and businesses to export their goods.

- I look forward to hearing from our witnesses about this important issue.

Before the

MARITIME AND COAST GUARD SUBCOMMITTEE OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF MR. MICHAEL BERZON

on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

March 17, 2010

Chairman Cummings, and members of the subcommittee, I am Michael Berzon, President of Mar-Log Inc., located in North East, Maryland. My company provides consulting services to shippers in the area of logistics and supply chain. Prior to establishing Mar-Log, I was employed by the E.I. DuPont de Nemours and Company for 27 years. At DuPont, I held a number of different positions involving the management of DuPont's maritime transportation services procurement and responsibility for marketing in Latin America.

I am here today representing The National Industrial Transportation League ("League"). The League is the nation's oldest and largest association of companies interested in transportation. The League's more than 600 members range from some of the largest companies in the nation to much smaller enterprises. The League's members primarily include companies that move their products through our country's transportation network and are engaged in the movement of goods both domestically and internationally. These members ship their products via all modes of transportation, including ocean transportation, and they export and import products to and from points all over the world. League members also include carriers and transportation intermediaries that arrange transportation services. Therefore, our members are greatly affected by our nation's maritime policy. However, most of our members are customers of the ocean liner carriers.

I am the Chairman of the League's Ocean Transportation Committee, which is composed of League members concerned with transportation of goods via vessel carriers, including the ocean liner carriers that are regulated by the U.S. Federal Maritime Commission.

The National Industrial Transportation League is very pleased to have been invited to present testimony on "Capacity of Vessels to Meet U.S. Import and Export Requirements." We have actively supported and participated in prior initiatives of this subcommittee in the past, including reform of U.S. regulation of international shipping that led to the adoption of the Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998 (OSRA). Our objectives then are no different than our objectives today—we support an international maritime system that is competitive, robust and delivers timely and efficient ocean transportation services to U.S. industries that rely on imports and exports. It has long been the policy of the League to support transportation policies which promote competition among carriers and depend on the forces of supply and demand to determine the rates and charges assessed to the carriers' customers.

The League is the nation's oldest and largest association of companies interested in transportation. The League's more than 600 members range from some of the largest companies in the nation to much smaller enterprises. The League's members primarily include companies that move their products through our country's transportation network and are engaged in the movement of goods both domestically and internationally. These members ship their products via all modes of transportation, including ocean transportation, and they export and import products to and from points all over the world. League members also include carriers and transportation intermediaries that arrange transportation services. Therefore, our members are greatly affected by the subject of this hearing.

I. INTRODUCTION

A. U.S. Businesses Require Competitive and Efficient International Ocean Transportation Services to Compete in Today's Global Marketplace

More than at any time in our history, American companies are required to compete in a global marketplace. Competition from China, India, and other regions of the world is fierce and the world-wide marketplace is more complex than that which existed when the 1984 reforms and 1998 reforms to our international shipping regulation were adopted. Companies that rely on imports and exports strive continually to improve their competitive position. International ocean transportation costs and reliable services are important factors in their success.

Additionally, U.S. businesses are required to operate in a dynamic economic environment and they must adapt to changing market conditions. The deep economic recession this past year has required both shippers and carriers to control costs and adjust their operations in response to the decline in freight volumes. However, an economic upturn has begun and, in order to compete in the global economy, companies must have adequate vessel capacity to get their goods to market timely and efficiently.

Cargo capacity has been directly influenced by U.S. trade and monetary policies. For the past decade, U.S. imports have far exceeded exports resulting, in some cases, in limited capacity on vessels during peak seasons for inbound cargo and added equipment repositioning costs for outbound cargo. The decrease in the value of the U.S. dollar which occurred just prior to the recession increased the demand for U.S. exports, creating vessel capacity and equipment shortages which prevented many exporters from getting their goods into foreign markets in a timely manner.[1] Just as market conditions fluctuate, creating both new opportunities and challenges for shippers and carriers alike, the League believes that the regulation of the international shipping industry must evolve to ensure that it will meet, and is meeting, the pro-competitive policies of the free market economy in the U.S.

B. U.S. Shipping Regulation Must Be Responsive to Changing Market Conditions

The League strongly believes that U.S. regulation of ocean transportation services must foster a competitive, market-driven system, in which the ocean liner carriers provide vessel space and pricing that is based on the free market. The reforms brought forth by OSRA in 1998, most significantly, confidential contracting between shippers and individual ocean liner carriers, have assisted in stimulating competition among the foreign ocean liner carriers that serve the U.S. trades. Since OSRA was passed, business practices in the liner shipping industry have changed significantly, and confidential service contracts are now the preferred business arrangement. The proliferation of individual contractual relationships led quickly to the demise of many of the carrier liner conferences that once dominated the liner shipping industry and dictated the rates and service terms offered to shippers.

However, despite those commercial contracting benefits, ocean liner carriers retained their limited antitrust immunity under OSRA and they use that immunity to collectively discuss supply and demand, and establish joint recommendations for freight rates and surcharges for the U.S. trades, primarily through "Discussion Agreements." Although any action taken as a result

[1] Where's the Beef? Shortages of Containers, Space on Ships May Frustrate U.S. Exporters for Years, *American Shipper*, June 2008, at 80-85; Coming Up Empty, Exporters Have Problems Finding Containers for Their Cargo, *Journal of Commerce*, January 21, 2008, at 14-15; Exporters' Beef, Weak Dollar, Full Vessels Send Perishables Shippers Scrambling, Commonwealth Business Media, Spring 2008, at 8-14.

of collective discussions must be "voluntary" and not mandatory, one cannot always distinguish between the two. In general, General Rate Increases ("GRIs") and surcharges established by Discussion Agreements serve as benchmarks for service contract negotiations.

C. Recent Efforts By Carriers to Control Import Capacity and Pricing

While in recent weeks the trade press has focused on the lack of vessel capacity to serve increasing cargo volumes in the Asia to U.S. trade, it should be noted that the discussion agreement serving this trade initiated efforts back in 2009 to collectively manage vessel capacity in response to declining cargo volumes. At that time the Transpacific Stabilization Agreement (TSA) filed a proposed amendment to their operating agreement with the U.S. Federal Maritime Commission (FMC) (FMC Agreement No. 011223-043) that would permit the fourteen major ocean carrier members of TSA to jointly discuss and agree upon policies, practices and guidelines covering the supply and demand of vessel capacity employed in the eastbound trade between the Far East and United States. If allowed to take effect, the antitrust immunity afforded to the TSA members would have been significantly expanded to permit collective discussions and coordination over the utilization of vessels controlled by approximately 85% of the market participants.

The League opposed the TSA's attempt to collectively manage vessel capacity for imports from Asia and informed the U.S. Federal Maritime Commission of its serious concerns that the amendment had strong potential to significantly disrupt the market for ocean transportation service in the eastbound Far East trade.[2] Specifically, the League believed that the TSA's proposal would have permitted the carriers to substantially reduce capacity and, in turn, artificially decrease service options and increase ocean transportation rates.

To its credit, the FMC responded by requesting information from TSA as to the impacts of its proposal, which ultimately led to a withdrawal of the proposal by TSA. At that time, then TSA Chairman Ronald D. Widdows stated that, "TSA members remain convinced that today's unprecedented trade conditions justify exploring a *coordinated* approach to more efficient use of vessel assets—an approach that ensures adequate services levels while permitting carriers to operate more efficiently."[3] The League disagrees with this stated philosophy of a coordinated approach. Rather, our organization believes that the continuation of limited antitrust immunity for ocean liner carriers remains a barrier to achieving an even more robust, competitive and efficient maritime industry.

Ultimately, individual liner carriers chose to address declining freight volumes through individual actions to reduce vessel capacity—carriers laid up tonnage, avoided adding new ships to the trade, consolidated port calls, implemented slower steaming, and eliminated strings of vessel sailings.

D. TSA Introduces New Rate Guidelines

In October 2009, the TSA announced that its members had "voluntarily" agreed to substantially raise rates for the 2010 contracting season that traditionally starts on May 1.

Specifically, the TSA Guidelines established:

- a general rate increase of $800 (USD) per forty foot container (FEU) for local West Coast and Group 4 Western coastal states and $1,000 per FEU for intermodal and U.S. East and Gulf Coast all water cargo with per formula increases for other equipment sizes;

[2] See January 8, 2009 Letter from The National Industrial Transportation League to Karen V. Gregory, Secretary, U.S. Federal Maritime Commission, attached hereto as Exhibit A.
[3] TSA Press Release, February 9, 2009

- a $400 peak season surcharge, effective August 1, 2010 to address higher cargo handling equipment potential and containerization planning costs during periods of peak cargo volume; and,
- full collection of fuel and accessorial charges.

In addition to the above guidelines, commencing on January 15, 2010, the TSA introduced an interim Emergency Revenue Charge for cargo moving in the Trans-Pacific. The new Emergency charges included:

- U.S. $320 per 20 foot container (TEU)
- U.S. $400 per standard 40 foot containers (FEU)
- U.S. $450 per higher volume FEU and,
- U.S. $505 per 45 foot container.

According to anecdotal information from League members that ship cargo in the Trans-Pacific trades, the capacity reductions employed by the carriers have forced many shippers to pay TSA's Emergency charges in order to secure space for their cargo on the carriers' vessels. Some importers have reported that their refusal to pay the emergency charges, even if based on protections against price increases contained in their contracts, resulted in their cargo being left on the docks or "rolled" from confirmed vessel sailings to a later sailing. The League is concerned by such reports from its members.

Furthermore, despite an increased demand for cargo space in the Pacific inbound trade, the League understands that individual carriers do not intend to add capacity until the carriers believe that there is a sustained demand for such space. If this is true, we are concerned that cargo will continue to be rolled or will miss vessel calls, which will only further impede the economic recovery that is just springing to life. U.S. businesses need to have reliable and timely ocean transportation services in order to fill their store shelves and meet the growing demands of the marketplace.

II. CONCLUSION

In conclusion, while the economic recession has been hard for both carriers and their customers, the reduction in vessel capacity in the eastbound Trans-Pacific trade has made it difficult for the supply of space to meet the recent upturn in demand. Moreover, in today's economic environment the recent pricing practices of TSA members are straining the commercial relationships between shippers and carriers.

While the maritime industry has evolved and prospered under OSRA's reforms, the League believes that even greater benefits could be achieved if competition among service providers is the only factor that determines the supply of vessel space and related shipping rates and charges. U.S. businesses that depend upon ocean transportation should not have their cargo left on the docks or be required to pay higher rates that are derived from collectively established benchmarks. Accordingly and as we told this subcommittee in June 2008, the League believes that it would be appropriate for the Congress to review the existing international shipping regulatory structure to determine if additional reforms are needed to further enhance competitive and reliable ocean transportation services that meet the needs of U.S. businesses and the national economy.

We thank the subcommittee for this opportunity to comment on this most important and pressing issue and will be glad to respond to questions.

STATEMENT OF
RICHARD A. LIDINSKY, JR.,
CHAIRMAN, FEDERAL MARITIME COMMISSION
800 NORTH CAPITOL ST., N.W.
WASHINGTON, D.C. 20573
(202) 523-5911
(202) 275-0518 (Fax)

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

March 17, 2010

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to present my views and answer your questions on behalf of the Federal Maritime Commission (FMC or Commission) regarding the difficulties exporters and importers are experiencing due to the lack of available vessel capacity.

The Commission is keenly aware of complaints by U.S. exporters and, more recently, importers about the difficulty obtaining space to ship their products. Over the past few months, Commission staff, the Commissioners, and I have held a number of meetings with various carriers, shippers, representatives of the Transpacific Stabilization Agreement (TSA, the largest ocean carrier rate discussion agreement), and of the Westbound Transpacific Stabilization Agreement (WTSA). Other organizations have also met with us to describe their difficulties. Those organizations include the National Industrial Transportation League, National Retail Federation, the Agriculture Transportation Coalition, and the Pacific Coast Council of Customs Brokers & Freight Forwarders Associations (PCC).

The reports from shippers have been remarkably similar. Many say they have been forced to amend their service contracts and commit to higher rates in order for carriers to transport their cargo. Many have had shipments delayed or "rolled" to future sailings. Exporters, particularly agricultural exporters, have had difficulty obtaining containers. Carriers, on the other hand, point to losses incurred over the past two years due to economic conditions, claiming they collectively lost $15-$20 billion in 2009.

Over the last few turbulent months, as we have emerged from economic conditions the likes of which have not been seen for over seventy years, the shipping industry has been experiencing its own turmoil. Much of this has been noted in the trade press, and most recently in a Wall Street Journal article published on March 12, 2010, under the headline "Export Revival Threatened by Shipping Bottlenecks."

It appears that the core of the problem is that carriers removed vessels from service after a dramatic drop in demand in the depths of the recession from late 2008 through much of 2009. Recently, demand for container transportation has increased as the American economy has begun to recover. But reports indicate that vessels have not been redeployed as fast as the demand for space has increased.

Ocean carriers advise us that they anticipate moderate capacity increases – bringing in new vessels and expanding service – as it becomes clear that the growing demand will be sustainable and that rates return to levels that allow them to be profitable again. According to Drewry Forecasts, ocean carriers have already announced capacity increases for this April of 2%, or nearly 6,000 twenty-foot equivalent units (TEU) per week, for the Transpacific trade, where we are hearing the most reports of constraints. This includes the launch of a new shipping company in the Transpacific trade, The Containership Company, with weekly service between Los Angeles and China, as well as the re-entry of Pacific International Lines. Nevertheless, the projected April capacity is still more than 6% below where capacity stood in April 2009.

The ocean carriers' cautious reaction might be explained by the tremendous impact the recession had on their finances, as well as by economists' uncertainty over how much of the recent uptick resulted from restocking of low inventories as opposed to a sustained increase in demand. On the other hand, available shipping space is a key ingredient to the financial recovery of American exporters and importers.

The Commission understands the impact of the tremendous economic swings over the past two years – affecting both the ocean carriers and their exporter and importer customers. We know from experience that trades are almost never in perfect balance as to imports and exports. From the outset of containerization fifty years ago, there have been fluctuations between undercapacity and overcapacity.

We also are mindful that the increased demand for cargo space represents a good sign for the economy overall. In this regard, cargo shipments in the January-February time frame were significantly higher in 2010 than in 2009. For example, we saw an increase of 32% in U.S. ocean-borne liner exports from our major Ports of Los Angeles and Long Beach in January and February of 2010 as compared to 2009. Liner imports increased 13% at those ports in the same period.

Nevertheless, we are seriously concerned with the current situation, particularly with reports of U.S. exporters unable to obtain space. As you know, an expressed policy of the Shipping Act is "to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace." And last week President Obama directed agencies "to use every available federal resource" to increase U.S. exports over the next five years.

The Commission is doing its part to advance Congress's and the President's policies in this critical area. We have been pursuing a number of avenues, consistent with the limits of our authority, in an attempt to help alleviate the reported problems with export and import capacity.

For example, Commission staff has recently met with the Department of Agriculture staff and the WTSA in an effort to develop an information system that would enable agricultural shippers to identify the locations of available empty shipping containers. Insufficient container availability has been a recurring problem affecting our agricultural exporters. Addressing the current problems with container availability and the location of equipment for exporters will require coordination among several modes of transportation and the agencies that regulate them. This issue is one of the focuses of a forthcoming study by the Department of Transportation and Department of Agriculture that Congress called for in the 2008 Farm Bill. The Commission is committed to working with those agencies to address the intermodal transportation issues behind these equipment shortages.

My fellow Commissioners and I have personally met and expressed our concerns with Mr. Young Min Kim, the CEO of Hanjin Shipping and new Chairman of the TSA, as well as executives of other carrier members. As a result, I have communicated to Mr. Kim a number of grievances we have heard from shippers. Today, the TSA is meeting in Taipei and Mr. Kim has assured me that those issues will be discussed.

As a result of a meeting with representatives of the PCC this past Monday, I will also be submitting a list of U.S. exporter concerns to the WTSA, and asking for a response. In addition, I have discussed these concerns with the World Shipping Council, an association of major liner ocean carriers. In each of these discussions, I have consistently stressed to ocean carriers and their shipper customers that they must act as "partners in recovery," as each is dependent on the other for economic recovery. The Commission will continue to serve as an honest broker between these partners.

Moreover, I am pleased to announce that on March 11, 2010, the Commission unanimously voted to initiate a Non-Adjudicatory Fact-Finding Investigation into the space and equipment shortages. The Fact-Finding Investigation will be headed by Commissioner Rebecca F. Dye. She will conduct a full and fair analysis of the circumstances, explore ways in which the Commission can help resolve the current situation, in light of our current limited authority, and report results to the Commission along with any recommendations of a policy or regulatory nature, as well as suggestions for any possible legislation that may be needed. We will be sure to keep this Subcommittee apprised of how the investigation is proceeding, and will be happy to share our report and recommendations when the investigation is complete.

Finally, the Commission has consistently reminded all parties that issues between individual shippers and carriers can be resolved with the assistance of the Commission's Office of Consumer Affairs & Dispute Resolution Services, which specializes in resolving disputes through mediation and other alternative dispute resolution services. We encourage carriers and shippers alike to use those services.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to address you today. I look forward to the Subcommittee's continued interest in this issue and I would be pleased to answer any questions you might have at this time or at any time in the future.

Testimony presented to
U.S. House of Representative
Committee on Transportation and Infrastructure

Subcommittee on Coast Guard & Maritime Transportation

Hearing on

"Capacity of Vessels to Meet U.S. Import and Export Requirements"

March 17, 2010

By

Chris Mullally – President
Mohawk Trading Co., Inc.
1716 Central Avenue
Albany, NY. 12205
(518) 869-9700

It is my honor and privilege to provide the following testimony to the United States House of Representatives Committee on Transportation and Infrastructure. Today the challenges facing exporters of all goods from the United States of America are enormous and in many cases impossible to overcome. It is my objective to provide this committee with as many facts as possible. The personal challenges, which are written below, pertain mostly to the agricultural area of exports from the United States. However, please be clear that I have no doubt whatsoever that these same circumstances are being faced by exporters of all types of goods and commodities produced in the United States of America. I sincerely thank this committee for this opportunity to share with you the current dilemmas that I face as a businessman and exporter. The details that I am about to share with you are a common story for all exporters in the United States.

I, Chris Mullally, President of Mohawk Trading Co., Inc. provide the following testimony regarding the difficulties facing all exporters in the United States of America. Currently I am also the elected Chairman of the Board for theUnited States Hide, Skin & Leather Association located in Washington DC.

The agricultural commodity that my company exports is Cattle Hides. The source of these products is mainly from the states of Kansas, Colorado, Nebraska and Texas. However, there are many other states from which this product can be sourced and located.

The Cattle Hide business is of tremendous value to the economy of the United States of America covering more than 2 billion dollars in export sales annually. More than 90% of all Cattle Hides produced in the United States are and must continue to be exported. With leather being the ultimate end product produced from Cattle Hides, we must export this commodity to foreign buyers because the ability to produce leather in the United States has now dropped to less than 10% of United States cattle slaughter production.

The quantity of total Cattle Hides produced in the United States is around 34 million pieces annually. Of this total production about 31 million pieces are annually exported from the United States. The translation of this number into the number of containers exported from the United States equals around 48,000 annually. The vast majority of these containers are exported through various U. S. ports located on the west coast of the United States to various countries in Asia but mainly to buyers located in China.

The challenges in accomplishing this volume of exporting have become tremendous. First, like most agricultural produced in the United States, the locations of their production are far from any major cities and U. S. ports. This one fact in itself has caused many difficulties for all of us. With the production locations being as they are, we continuously face the difficult challenge of finding sufficient quantities of empty ocean containers to load. Most ocean carriers today are no longer willing to provide the required empty ocean containers to the locations where they are needed and required by most agricultural exporters. Instead the ocean carriers have chosen to simply send them back empty by rail to the United States west coast shipping ports where they are then put on the vessels still empty, in order to support the needs of foreign exporters mainly in the Asian markets for importing their finished goods to the United States.

Therefore, because of this decision by the ocean carriers, the availability of empty containers to load for our export shipments in these rural locations completely depends on whether or not the ocean carriers have import business into those same rural locations. Simply put this is not an equation that will ever be even close to being equal to what is needed and required by the agricultural community. Most import containers arrive only at major cities in the United States or at distribution centers and warehouses located closer to the ports at which they are arriving.

Second and the actual largest challenge currently facing all exporters in the United States is available vessel space capacity. Even if we are able to secure the empty equipment in order to load our product, getting those containers to actually be loaded on board an ocean vessel has become a literal nightmare. In 2009 this became a challenge but since late December 2009 and so far in the first quarter of 2010 this has become the single most difficult situation that I have ever faced as an exporter.

In 2009 as import cargo from Asian markets to the United States diminished substantially, the ocean carriers began to reduce the amount of vessel service that they were providing. As the end of 2009 approached, the ocean carriers began to forecast even further reductions in import volumes to the United States and consequently made further cuts to the ocean vessel service to the low point at which we are at today. Simply put, ocean carriers have reduced vessel capacity to the point that the available quantities of exports from the United States can no longer be handled in a proper or timely manner.

With the situation as described above, exporters like myself were forced to make longer forecasts as to what our exact export needs would be. Prior to 2009 if we needed vessel space from any carrier we could reserve that required vessel space to any foreign destination in Asia with just 1 week notice. In today's shipping environment the minimum time required to reserve this same vessel space is now minimum 4 to 6 weeks in advance to popular foreign shipping ports and for some unpopular foreign shipping ports it can be even longer than this. Now you might be wondering to yourselves, what is so challenging to any business to forecast their business needs further out. Obviously the real answer is that in many cases it is not that difficult to accomplish. The real problem now is that all the planning in the world cannot prevent these ocean carriers from just blatantly canceling these planned out vessel space reservations at the very last moment. They have absolutely no concern whatsoever as to the possible consequences and damage it can cause an exporter.

Case in point, on February 22, 2010 one ocean carrier arbitrarily canceled 17 different vessel space reservations of ours, which covered shipments for 4 to 5 weeks forward. These vessel space reservations were planned out and made many weeks in advance of the cancellation date mentioned above. With that one day of cancellations, this particular ocean carrier had now canceled a total of 20 different vessel space reservations covering a total of 75 export containers. The reason that was given to us for this sudden and last minute cancellation was simply that all those vessels were now in an overbooked situation. This is the same reason usually given to us by any and all of the ocean carriers who behave in this very same manner.

This situation caused major problems for our company. With vessel capacity already a major issue, all other ocean carriers were unable to replace these canceled space reservations for us. This now meant that we would have a huge hole in our shipping plan to our regular buyers in Asia, which would be impossible for us to recover from. When this circumstance was clearly explained to the original ocean carrier that had caused this problem for us it did not make one bit of difference to them. This is the ice-cold attitude that we received from an ocean carrier that we have had a relationship with for more than 12 years. This is the indifference that we received from an ocean carrier that had carried this same segment of our business almost exclusively every week for the previous 9 to 10 months.

Additionally, the hope of now retaining any of the originally calculated profits in these sales was now lost. In order to conclude the export of these 75 canceled containers, we would have to solicit other ocean carriers that we did not usually work with from this region of the United States. This meant that the fees we would have to pay to them would be substantially higher than what we already had arranged and agreed in our shipping contract with the original ocean carrier.

What is happening to us now is even more disastrous. With our in ability to make these export shipments, our clients are now unable to produce the leather from our shipments of Cattle Hides. This will in turn cause our clients to be late in their deliveries to the factories producing the leather handbags and shoes. If our clients are late on their end, one or all of the following situations will occur. They will have to pay a penalty for the late delivery, they will have to pay the additional high expense to airfreight the leather to the factory or they will have their order canceled altogether for late delivery.

The blame from our buyers for any of these consequences will fall squarely on us, not any ocean carrier. We have a real risk of losing very large and very reliable long-term clients. Additionally, not only are we unable to make our export shipments to our overseas clients, we are now also angering our domestic suppliers for not moving the product out of their production warehouses. This situation is clearly causing great damage to our business reputation and our current and future bottom line.

Where is an exporter to turn in case like this? Who is going to protect the rights of our business, our employees and our company?

The problem with the current system is obviously that these vessel space reservations have no meaning or value if the ocean carriers are allowed to just cancel them at the very last moment. Even when carefully planned ahead by ourselves. Frankly speaking, it is just impossible for us to comprehend that if we can plan out the vessel space that we require several weeks in advance, why then is it not possible for these ocean carriers to also plan out and know the capacities of their own vessels ahead of time as well? How is it possible that "suddenly" they have no available vessel space on 5 different vessels for 5 consecutive weeks?

If you buy a ticket today from a set origin point to a set destination point on a cruise ship or a ticket for an airline flight in January but your actual travel date is not until April, the cruise ship line and the airline still must honor that reservation you have made. Admittedly the ocean carrier reservation system is somewhat different than the two transportation industries I have just mentioned. However, the fact of the matter is that although not paid in advance, there is a signed shipping contract agreed between both the ocean carrier and the exporter for an agreed upon fee from a set origin point to a set destination point. This amount will be paid in full by the exporter when the transportation actually takes place. However, completely unlike the other transportation industries mentioned, the ocean carriers are not required to honor their commitments to the clients purchasing their services.

The ocean carriers constantly complain that exporters are "over" reserving space in order to make sure that they will be able to make their exports. Then they further state that these same exporters are either partially or fully not using the vessel space reserved. The ocean carriers further claim that this in turn causes their vessels to leave various ports in the United States not full. With all honesty and sincerity I cannot deny that this may be the true case with some exporters who have become so desperate in the current shipping times that they are doing everything they possibly can to guarantee the export of their product in a timely manner. However, this is by far not the majority of cases. It is also a practice which is discouraged and frowned upon by our own industry leaders and fellow exporters. I certainly do not believe as one ocean carrier recently claimed that this number is as high as 40 percent of their vessel space reservations. Absolutely, there is no ocean vessel leaving this country at that percentage of emptiness. This statement by ocean carriers is completely absurd.

Another circumstance really plaguing exporters currently is to get your containers, which have already been loaded for those vessel space reservations which have not been canceled, to actually load on board the vessel for which it was originally intended for. This situation has become quite troublesome for us because we are constantly running into situations now where our cargo has been loaded into containers, moved to the U. S. West coast by rail and delivered to the port waiting for the ocean vessel to sail. However, only after 1 or 2 days has passed since the vessel actually departed the U. S. shipping port do we find out that either all of our cargo or part of our cargo was left behind. Of course, once again the excuse being given by the ocean carriers is that the vessel capacity was overbooked.

We have even had some cases recently where it took 3 weeks and 3 different ocean vessels just to export 6 containers, which we had loaded and arrived at the port in time for the shipment to be made on the original ocean vessel that the space reservation was made for. Once again in this type of situation, we are completely at the mercy of the ocean carrier to do what they said they were originally going to do. We are never consulted at all about whether there will be any consequences or risk to our own business when once again the ocean carriers at the very last minute arbitrarily make such decisions.

In fact there have been several cases where we have had multiple shipments reserved on the same vessel. As a simple example of this outrageous behavior and neglect on the part of ocean carriers, lets say that we have 2 space reservations for 3 containers each going to the same port in China. The ocean carrier decides that it needs to cut 3 of these 6 containers from the ocean vessel. So, do they just leave 3 containers behind from one of these space reservations? Most of the time the answer is no – they decide to leave 2 behind from one space reservation and 1 behind from the other space reservation. This type of situation only causes our costs to increase further and our profits to dwindle, as we now have to needlessly reissue the documentation for both shipments instead of just one of them. When this type of situation occurs it also doubles the fees we must pay to our bank for handling the collection of these payments from our clients. And by the way, the documentation and bank fees incurred is now for 4 sets of documents instead of the original 2 sets of documents to cover the same shipment of 6 containers. Lastly it also angers our foreign buyers who also incur increased costs on their side from these split shipments.

All of these situations only add unnecessary cost to the execution of our sales. The fact just continues to repeats itself over and over, we just do not have any rights whatsoever as an exporter.

There are several payment risks that our business encounters when we have the situation of ocean carriers leaving our cargo behind without any consultation. These payment risks can arise as International Bank issued Letter of Credits are the payment instrument for the majority of the exports that my company is making. These payment instruments all have set requirements such as a latest shipping date, an expiration date and sometimes a clauses stating that partial shipments are prohibited. The partial shipment clause is self-explanatory. For example, the foreign issuing bank is not required to make the payment to us if it is required that we ship all 3 containers on board one ocean vessel. This becomes a risk to us when we are informed by the ocean carrier without any consultation that 2 containers were loaded on board the vessel and the balance 1 container was left behind. Even if the Letter of Credit allows partial shipments, the latest shipping date can be compromised when cargo is arbitrarily left behind as well. This happens when again 2 containers are loaded on board the ocean vessel prior to the latest shipping date but the balance 1 container is left behind and cannot be loaded on board the next available ocean vessel, which is mostly likely departing 1 week later and possibly after the required shipping date of that Letter of Credit. In the same circumstance mentioned above, the expiration date can also be compromised when there is insufficient time to reissue all the required documentation in order to present them for payment to the bank prior to the expiry date.

The ocean carriers all know and clearly understand the facts and circumstance that I have just outlined for you above. However, it is once again with blatant disregard to our concerns that they continue to make these types of decisions with our export cargo.

The payment risks mentioned above are with all honesty not something that occurs in stable markets or when there is an extremely strong demand for our export product. However, in an unstable and falling market, these concerns are often highlighted and very real, especially in markets like China. When situations occur as outlined above in falling markets we are clearly in jeopardy of having to resell this cargo at huge losses because distressed cargos can never command the original sales prices.

I have been involved in the export business for nearly 30 years now and I have never in any previous time witnessed the situation to be as it is today. There needs to be a solution to the this space reservation cancellation problem from both the ocean carriers and the exporters. Sometime ago it was proposed by the exporter side that there should be penalties to both sides if vessel space reservations where not honored from either side. While exporters were willing to make a proposal like this to the ocean carriers, the ocean carriers have made no attempt to find or agree to a solution like in order to solve these specific issues. It is obvious that then ocean carriers do not want to take any responsibility whatsoever to honor these space reservations that they are making with exporters. The solution here is there should be some sort of regulation in place in order to make sure that these vessel space reservations are honored, mainly by the ocean carriers as well as the few exporters who may actually be acting as the ocean carriers are claiming them to be.

Regardless of everything just stated above, what is at the real heart of this matter? Why has the situation for exporters become so difficult? Much of the truth in finding the source of this most recent increase in severity to lost space for export shipments has to do with the surges in imports to the United States from Asia in the past 4 months. As imports from Asia have now drastically increased over the same period last year, the ocean carriers find themselves with an insufficient inventory of available empty containers for the Asian exporters to load. Therefore, it is not only my own opinion but I believe it to also be a matter of fact that ocean carriers have been cutting export shipments since December 2009 in order for them to carry empty containers back to the Asian markets to allow them to meet the demands of their Asian customers over the demands of their United States customers.

A secondary and nearly almost as important concern for exporters in the current environment is the never ending and continuous freight increases being levied by the ocean carriers. The frequency of and lack of sufficient notice is harming all of us from my own company to the company I buy the hides from all the way back to the farmer that sells his cattle.

For more than 20 years now I have been asking all ocean carriers to allow sufficient notice of any price increase so that we are afforded the opportunity to include this additional cost in the sales price we are making. Unfortunately, this request has fallen on deaf ears by all carriers again and again because of their complete lack of concern on how their decisions affect those of us who are their clients.

We sell our export product for delivery in forward periods of 2 to 3 months. When an ocean carrier announces a General Rate Increase or "GRI", they only allow 30 days notice before this increase actually takes place. As mentioned above, for the past 20 years I have personally been asking ocean carriers to allow a minimum of 90 days notice before instituting any new GRI's, fuel surcharges or any other changes to our current rate structure. However, repeatedly for the past 20 years all I continue to hear from these ocean carriers is that they are only required to allow 30 days notice so this is all they will give. For the umpteenth time in this testimony, the reason they do not adhere to a request like this is because of their continued and constant disregard for the consequence that arises for our business.

It seems to me that it would be very simple for them to afford us the opportunity to cost out these freight increases to our foreign buyers in Asia rather than take it directly out of American pockets. When the ocean carriers change the shipping costs with only 30 days notice, those additional funds required to pay the freight costs come directly out of our own bottom line. The profit margins that we originally had calculated are greatly reduced or completely nullified. If they would simply allow 90 days notice for all of these things, we could accept these increases without any personal loses and they would achieve their ultimate goal of garnering more income for themselves. As exporters, we all know and clearly understand that currently the ocean carriers are in dire need of increased revenue. However, can this not be done in an amicable way to benefit both the exporter and ocean carrier?

Members of Congress, does this seem to be such an outrageous request by myself or in general all exporters of the United States of America?

When we are forced to essentially lose money on transactions already made this only means one basic thing. The next time we make a purchase from our suppliers at the slaughterhouse level, we will have to pay them less in order to make up for these unexpected losses, which were originally profits. Now, if we have to pay them less for the Cattle Hides, this means that they will have to pay less to the cattle feeding company where the cattle are fed prior to slaughter. If the feeding company collects less for the animal this in turn goes back now to Mr. Farmer or cattle rancher in Nebraska, Iowa, Colorado, Texas, Kansas or many more states. How can something like this be good for the recovery of our economy?

While I clearly understand that these ocean carriers are all private businesses, I can only hope that through hearings like this you can help us to find solutions to circumstances likes these which are desperately needing new and useful regulations and direction from our Government.

Please make no mistake in understanding that these ocean carriers all set rates and vessel capacity. They are currently allowed by United States law to sit and discuss all matters pertaining to their businesses in a collective manner. While individual contract ocean freight costs will differ from ocean carrier to ocean carrier and exporter-to-exporter, these are the only things that differ. When general rate increases (GRI's) are announced to exporters in the United States, they are always for the same exact amount and they are always effective on the same exact day. This is the same case for any and all other changes to fuel or other surcharges as well.

One of the longest running grievances I have with all ocean carriers pertains to fuel surcharges or bunker surcharges. This is essentially the charge that exporters have to pay ocean carriers based on the actual increasing or decreasing price of oil. Several years ago when oil prices were steady or increasing at a much slower rate this surcharge was always adjusted by the ocean carriers on a quarterly basis. This was always the preferred method for exporters to handle these changes in oil prices. However, when oil prices began surging, suddenly without any notice from ocean carriers it was decided that the change is this fee would become monthly rather than quarterly, as it had always been. Naturally, although we did not like this fact, we understood that it was necessary because the ocean carriers needed to recover as much of this lost revenue as possible. However, do you know what these same ocean carriers did when the price of oil began declining quickly? They <u>all</u> immediately changed the structure of this surcharge fee back to quarterly basis so they would not have to give back anything to the exporters. Once again, please do not believe for even one moment that the ocean carriers are truly working independently from each other.

In closing, I would like to say to all the members of Congress reading this testimony today that the circumstance presently facing exporters is extreme. I have volunteered to participate in this testimony in order to bring to light the very difficult situations we are now facing. I have reached the end of my rope. I have no place else to go and no place else to turn now but to you gentlemen of the United States Congress. The only ones who can help restore some respect to the exporters of the United States of America. To you our Representatives, who are our only hope of obtaining any semblance of exporting rights from these foreign ocean carriers.

Testimony of

Robert F. Sappio

On Behalf of

American President Lines, Ltd.

Regarding

Capacity of Vessels to Meet U.S. Import and Export Requirements

Before the

House Subcommittee on Coast Guard and Maritime Transportation

March 17, 2010

Testimony of

Robert F. Sappio
Senior Vice President, Pan-Americas Trade
APL Limited

I. Introduction

My name is Bob Sappio, and I am the Senior Vice President for Pan-American Trades at APL, which encompasses the Transatlantic, Transpacific and Latin American Trades. I have worked for APL for 28 years. I have been responsible for APL's Transpacific trades in one capacity or another for 7 years.

I'm here today to address the issue of equipment and vessel capacity in the US trades from APL's perspective. I am not here representing other carriers, the World Shipping Council (WSC), the Transpacific Stabilization Agreement (TSA) or the Westbound Transpacific Stabilization Agreement (WTSA). APL believes in open and informed dialogue with all stake holders in the transportation industry. APL has been a leader in encouraging groundbreaking communication between carriers, shippers and government agencies regarding a range of issues. My appearance here today is part of APL's ongoing engagement to share information and our views regarding maritime transportation in US foreign commerce.

APL is the world's fourth largest container shipping line by volume and a 160 year old expert at transporting global trade on land and sea. APL's predecessor companies started in 1848 and have played an important part in America's maritime history ever since.

Since 1997 APL has been part of Singapore-based NOL Group. We have a fleet of 146 vessels, and we operate marine terminals at the ports of Los Angeles, Seattle, Oakland and Dutch Harbor Alaska. We also operate landside warehouse and logistics facilities around the world. Our ships operate in all of the world's major trade lanes. APL currently deploys almost 600,000 containers in its worldwide network, including refrigerated containers and oversize containers designed for specific customer needs.

Our fleet includes 20 US Flag vessels and employs 640 US merchant seamen. Since World War II we have transported cargo for the military to troops around the world. APL has received numerous Department of Defense awards for its support of our military services. We also support the Maritime Administration's training program for US Maritime Academy cadets, providing training berths on our US Flag and non-US Flag container ships. Our CEO is on the board of the US Merchant Marine Academy.

During the past ten years, APL has invested over two billion dollars in new vessels and another two billion dollars in ancillary equipment including containers and chassis to serve its customers, and has twenty one additional ships on order. We provide high quality and reliable service to our customers, which include the biggest names in retailing, manufacturing, clothing and consumer electronics here in the US. APL proudly carries US export cargos, including forest products, agricultural goods, beef, pork, heavy machinery, chemicals and seafood. APL has been a leader in innovation in maritime transportation since its beginnings, including Stacktrain intermodal technology, web-based supply chain visibility tools and deployment of ocean-capable 48-foot and 53-foot containers.

We manage flows of cargo to US factories from around the world, supporting thousands of jobs, including the automotive and electronics businesses. Our logistics business helps our US customers manage finely-tuned supply chains that help keep US industry competitive in the world. APL has won numerous awards, including Best Ocean Carrier for 2009 from the Agricultural Transportation Coalition. Our CEO Ron Widdows was awarded the United Seamen's Service Admiral of the Ocean Sea (AOTOS) Award in 2009 for his innovative leadership in the industry.

Our Americas headquarters is in Phoenix. We have about 300 employees in Phoenix with approximately 3,300 in the rest of the US.

II. APL is Taking Care of Its Customers

This Committee is exploring the issue of equipment and vessel capacity in the US trades. Let me begin by providing you with an overview of this issue from APL's perspective.

First of all, APL is in the business of meeting its customers' needs. We provide reliable and predictable service to our customers. We are in the business of moving cargo. It is APL's intention to deploy adequate vessel capacity and sufficient equipment to meet the needs of our customers. However in order to do this on a sustainable basis we need to earn a proper return on our investments, create value for our shareholders and be able to continue to reinvest in our business to meet the growing needs of our customers. We expect that these priorities are shared by other container carriers as well.

Second, we are emerging from two years of unprecedented turmoil in global trade. This includes a drop in container volumes of 15% in 2009 in the Transpacific due to the global economic crisis. This affected both exports and imports. APL immediately undertook significant initiatives to reduce its costs, including right sizing its fleet and network, to achieve a more stable and sustainable footing for itself and its customers.

In this uncertain environment we have worked diligently to calibrate the size of our vessel and equipment fleets to market demand. We regularly talk to our major customers (both importers and exporters) and obtain from them their best estimates of their future needs, both in the short and long terms.

It has always been APL's practice to work closely with its customers with the objective of reducing volatility in both rates and service. Our ability to forecast demand depends on our customers' ability to forecast their needs. For example it is not clear whether the recent spike in import demand reflects a long term recovery or short term restocking. Similarly, while we project US exports will grow moderately, it is unclear what this means for container shipping. Will waste paper and scrap metal continue to be the largest volume of exports from the US in containers, as they have been for years? There has been a shift in modality from bulk vessels to containers for certain agricultural products. Will the recent trend to carry a larger percentage of bulk agricultural exports in containers reverse and migrate back to more traditional bulk modes of transportation? Will drybulk capacity be available to serve the US trades, or will those ships continue to trade in foreign to foreign markets? Container carriers are trying to help but there are limits to what the industry can do.

Third, we acknowledge that in some cases US exporters, including some APL customers, have been frustrated by the fact that they were unable to get space or equipment where they wanted it and when they wanted it. We feel those problems can be addressed, but the solutions depend on a return to market stability, accurate forecasting, robust demand and sustainable compensatory rates for both imports and exports. Deployed vessel capacity is driven by import demand, as explained below; as capacity to handle imports increases, so too will capacity to serve the export market. Industry analysts project that there will be import market growth in 2010. As such some capacity is expected to return to the trade, which should help the export shippers. Moreover it is important to remember that the vast majority of our customers are getting space and equipment when and where they need it. APL is honoring its contract commitments to shippers. We export approximately 7,000 containers from the US every week.

Finally, we will make investments in new services and vessels if we are confident that demand and operating economics are sufficient to sustain our business. If we could double the number of containers we export, we would do so, but the economics must make sense.

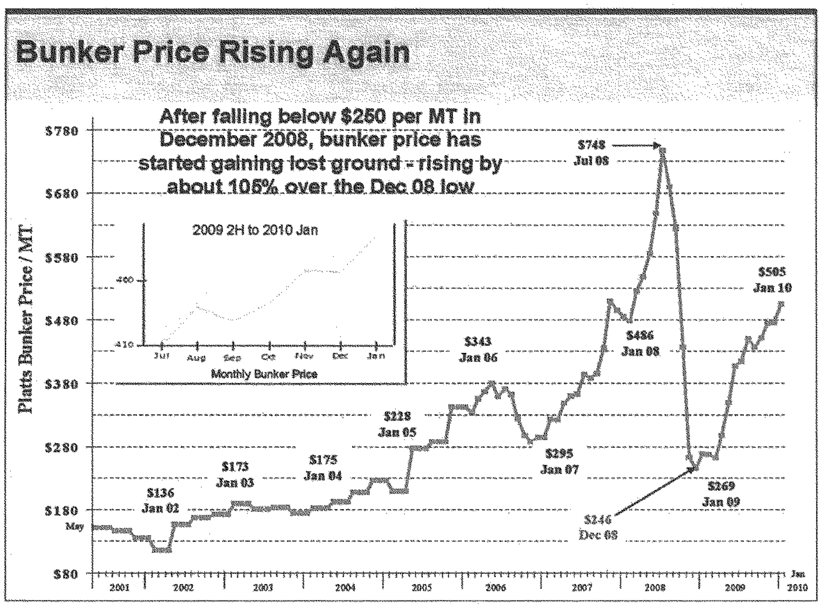
III. The 2008-2009 Crisis in Shipping was Unprecedented

With that introduction, I'd like to review what happened in this industry during the past year.

2009 was the worst year in liner shipping ever. We had never before seen a reduction in containerized volume in the US trade on a year-to-year basis. Containerized trade worldwide grew 9% per annum on average between 1987 and 2008. For the full year 2009 imports were down over 15% industry wide. In 2009 exports were down dramatically in the first half of the year, with a recovery beginning in the 4th quarter. For the full year export volumes were down .5%. During this time APL's rates dropped on average 35% for imports and almost 40% for exports in the US trades and by almost the same amounts in other trades. APL revenues fell from $7.9 billion in 2008 to $5.5 billion in 2009, and EBIT went from a $73 million gain to a $731 million loss. In 2009 the cost of operating a ship also increased, due primarily to escalations in the price of fuel (bunkers). Every major east-west trade was impacted by the economic crisis, with similar consequences: underutilized assets, collapse in freight rates, and unsustainable losses. A similar scenario played out in the Asia-Europe trade and the Transatlantic

Trade. APL's performance was generally reflective of the reported performance of other carriers.

What did APL do in the face of this potentially catastrophic situation? We moved aggressively to cut costs. We terminated the services that were losing the most money. We laid up ships. We reduced the size of our workforce worldwide. We took measures to reduce vessel operating costs, most notably by slowing the vessels down to conserve fuel, while simultaneously assuring the same weekly lift capability on existing services by adding more vessels to the rotations. Fuel represents approximately 54% of vessel operating costs. We took tough, decisive and difficult steps to assure the company's long-term survival and health.



How bad was the market last year? It was so bad that it made more sense to tie up a number of ships, some valued at more than $100 million, than to operate them. At one point APL had 20% of its fleet idle. This includes ships that were previously deployed in the Transpacific, the Intra-Asia and Asia-Europe trades.

We understand from press reports that collectively ocean container carriers, on a global basis, lost almost $20 Billion in 2009.

IV. Recent Complaints From Customers

In early March I participated on a panel with customers, also referred to as "shippers," at the Journal of Commerce Transpacific Maritime Conference, where I presented a talk entitled US Export Market Update. This presentation was another example of APL's active and ongoing efforts to maintain an open and informative dialogue with the shipping community. Three recent and related problems were voiced by the shippers I spoke with at the Transpacific Conference. These complaints were directed at the industry generally, but I answer here from APL's perspective. The shippers highlighted the following:

- Some import shippers have experienced difficulties in obtaining vessel space, primarily from China, during January and February prior to Chinese New Year.

- Some shippers have had problems with bookings, rolled cargo and cancellations.

- Some US export shippers have experienced difficulties in obtaining vessel space for their export shipments in recent weeks. They also have difficulty in obtaining containers at the origins they desire.

I think it is fair to say that APL, and the rest of the industry, was taken by surprise by the robust demand for space out of China prior to the Lunar New Year in February this year. I believe our customers were surprised too by the increase in activity. While we have traditionally experienced some level of higher demand in advance of Lunar New Year, we did not in 2009. A surge of cargo of this magnitude prior to Lunar New Year in 2010 was therefore not anticipated. Our deployments and planning were based on estimates provided by our customers, and these projections substantially underestimated demand for the January-February time frame. We polled key customers in the fall, and they indicated conservatively that there would be flat to low single digit growth in 2010. Instead volumes have increased by nearly 30%. A combination of factors appears to have caused this situation, including stronger than anticipated post holiday sales in the US and lower inventory levels in the US market with less safety stock. These factors seem to have caused importers to continue to keep shipping at higher than historically anticipated levels in order to replenish inventories during this traditionally slow period for imports.

For the month of January APL's overall volumes were up 63% higher than the same period in 2009. We see this trend continuing through the balance of the first quarter. While the economics did not justify launching new services, APL was able to respond to this surge in demand by increasing planned sailings, deferring non-essential dry dockings and in some cases redeploying larger vessels from non-US trades.

APL has also responded to concerns about booking cancellations. Our policy is to honor the bookings we take, but there are inevitably occasions where bookings are cancelled, or where cargo is unable to make the scheduled sailing date. There are numerous operational reasons for these situations, but fundamentally they relate back to the unexpected increase in export volumes during the past several months. Historically about 20% of shippers' export bookings (so-called "ghost bookings") fail to materialize as loaded containers tendered for carriage for various reasons. It appears shippers are making multiple bookings for the same cargo, which makes planning difficult. This is also true in peak periods for import cargos as well. I would also acknowledge that in some instances APL has not managed bookings as well as they could be managed. This has been true for both import and export cargo. We believe other carriers have had similar difficulties.

In order to improve the export booking processes at APL we have worked to improve communication and improve forecast accuracy with customers. Other carriers report they are also working hard to improve this dimension of service as well.

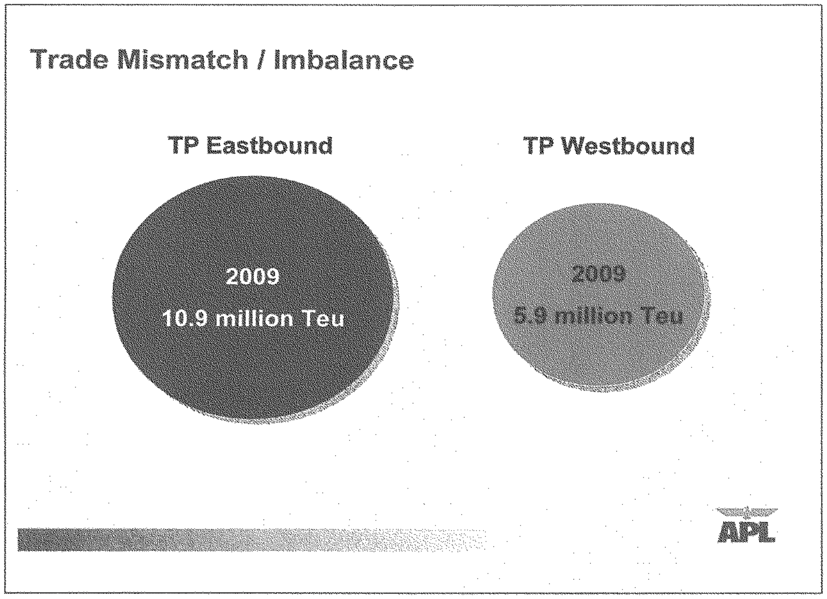
One last point on the subject of service contracts: APL strives to honor, and will continue to strive to honor, the terms of its service contracts. The essence of a service contract is that the shipper commits to offering a certain volume of containers during the contract term, and the carrier commits to carry that volume for a stated rate. The service contract does not require that every booking must be accepted, so long as the total volume commitment is met during the term of the contract, which is usually one year.

Once the shipper has tendered, and the carrier has carried, the contractually committed volumes, both parties have met their respective contract obligations. In a declining rate market, the shipper will often stop tendering cargo to the carrier on the contracted terms and seek new terms. Conversely the carrier must also be free to seek new terms after it has fully met its volume service commitment. The volume and service commitments must be realistic and reciprocal. Shippers cannot commit to a small volume and then reasonably expect the carrier to accept bookings in excess of that commitment.

V. Vessel Capacity and Equipment Availability for USA Exports

Let me turn to the question of the adequacy of vessel capacity and equipment for exports in the US. There are several complex structural factors beyond the control of carriers and shippers that constrain container exports from the US. These are well-known to the shipping community, but are worth describing in some detail so that the Committee can understand why problems sometimes arise.

The US trades are characterized by a steep imbalance between imports and exports. There are more full containers moving cargo into the US than there are full containers moving cargo out of the US. For example, in the Transpacific last year the US imported almost 11 million loaded TEUs, which means the equivalent of 11 million 20-foot containers and exported 6 million loaded TEUs. In the same trade, APL imported approximately 850,000 TEUs and exported approximately 450,000 TEUs of cargo. The imbalance represents about a 2 to 1 ratio. This imbalance exists even during periods when US exports are strong.



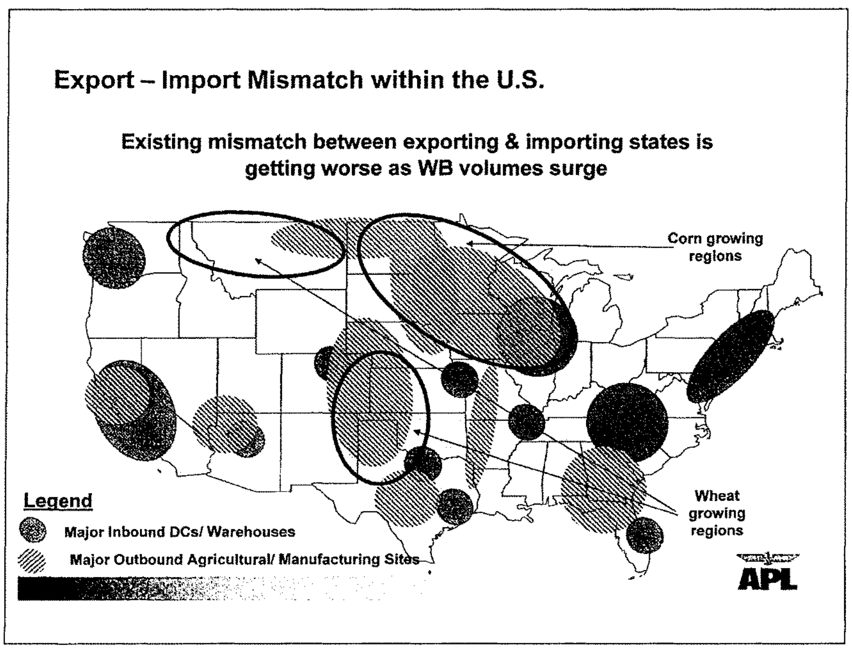
One might think that this would mean there should be plenty of unused capacity for exports, and historically that has been the case. But export capacity can be constrained in times of increased demand. The usable capacity of a vessel is significantly less for export cargo than for import cargo for the following reasons:

- The imbalance of imports and exports means that ocean carriers are compelled to move empty containers westbound in order to keep the system in balance; there must be the same number of containers moving in both directions. If there are no containers in Asia, US importers cannot bring their goods to market.

- Vessel capacity is limited by the available space for containers, and also by weight limitations. Eastbound cargo weighs an average of 10.3 metric tons per FEU. Westbound cargo weighs an average of 21.3 metric tons per FEU. Westbound vessels can "weigh out" meaning that they have reached maximum safe weight before all of the "slots" for loaded containers on the ship are used.

Also, some people are confused by references to a vessel's nominal capacity (number of containers it can carry under ideal circumstances) and the actual number of containers it is able to carry. Not surprisingly, a vessel's nominal capacity is not the same thing as its actual capacity. The actual capacity of a ship depends on the type of containers used, the height of containers, limits on the "stack weight" that it is safe to carry, vessel stability considerations, line of sight considerations and so forth.

Equipment availability for exports is also affected by the nature of the import trade. Simply stated, the destinations of inbound containers are not the same as the origins of outbound containers. For example, most import containers are moved to regions with distribution centers and warehouses. These tend to be on the west and east coasts and in major population centers. Exports, especially agricultural exports, tend to come from the middle of the country and less populated areas. It costs a substantial amount of money to move an empty container from a port to inland destinations by rail or truck, and in some cases the exporter or carrier cannot economically justify the cost of repositioning the equipment. The following diagram illustrates this problem.



Another factor affecting availability of equipment and capacity for exports has been the redeployment of bulk capacity from the US trades. Historically US export agricultural commodities have predominantly moved by bulk ships, not in containers. China's recent economic expansion caused a dramatic increase in bulk shipping rates as the bulk vessel operators pursued more lucrative business in foreign to foreign trades. For example, much of the global bulk transportation capacity redeployed carrying commodities from

Brazil and Australia to China. APL and other container carriers have tried to help by providing exporters an alternative for moving a portion of their goods. As a result, there has been a dramatic increase in agricultural products carried in containers. Nevertheless, the fact remains that the vast majority of bulk agricultural products moves on bulk ships – the use of containers for export has provided incremental additional capacity, but cannot replace the capacity of the dry bulk carriers. In short, the container carriers have offered a partial solution and are not the source of the problem. It is also important to remember that agricultural exports are displacing other traditional containerized export products, such as forest products, as one example. Unlike bulk carriers who chase cargo opportunistically in other markets, we run a liner network business with regularly scheduled weekly service.

The following graph reflects the growth of containerization of agricultural products in recent years, and a decline in 2009.

Transpacific Westbound

Source: PIERS

Containerized + non-Containerized

	Year					
Commodity	2004	2005	2006	2007	2008	2009
SOYBEANS	845,564	849,248	872,560	996,201	1,102,479	1,548,765
GRAINS/FLOUR	1,168,201	1,164,160	1,183,563	1,252,675	1,226,302	1,163,443
Total of Above	2,013,765	2,013,408	2,056,123	2,248,876	2,328,781	2,712,208

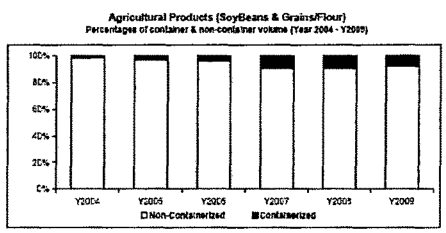
Containerized

	Year					
Commodity	2004	2005	2006	2007	2008	2009
SOYBEANS	18,080	43,501	47,544	122,514	112,563	87,895
GRAINS/FLOUR	20,457	21,973	33,064	103,851	117,712	122,317
Total of Above	38,537	65,474	80,507	226,365	230,281	210,016

non-Containerized

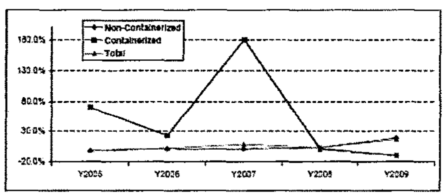
	Year					
Commodity	2004	2005	2006	2007	2008	2009
SOYBEANS	827,488	805,747	824,716	843,685	989,913	1,461,067
GRAINS/FLOUR	1,147,744	1,142,187	1,150,505	1,178,824	1,108,590	1,041,125
Total of Above	1,975,232	1,947,933	1,985,222	2,022,511	2,098,503	2,502,193

Above figures are in FEUs; conversion from metric tons to FEU based on APL internal formula



	Y2004	Y2005	Y2006	Y2007	Y2008	Y2009
Container	2%	3%	4%	10%	10%	8%
non-Container	98%	97%	96%	90%	90%	92%
Total	100%	100%	100%	100%	100%	100%

Year-Over-Year Growth



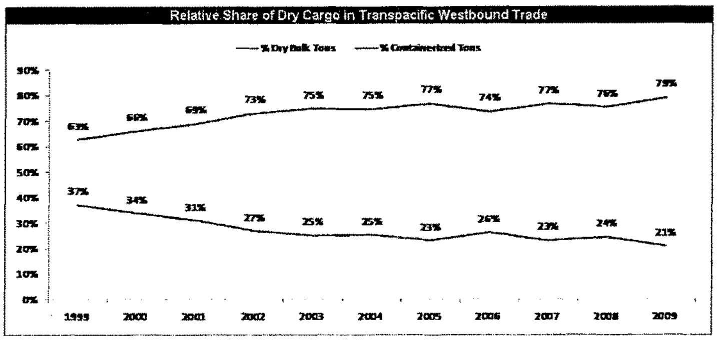
Year-Over-Year Growth

	N	C	N + C
Y2005	(1%)	70%	(0%)
Y2006	2%	24%	3%
Y2007	2%	180%	9%
Y2008	4%	2%	4%
Y2009	19%	(9%)	16%

N: Non-Containerized
C: Containerized

The following graph shows that the dry bulk business has been declining.

Share of dry bulk cargo in transpacific westbound trade has been in steady decline over the last decade; it now accounts for only 21% of total dry trade against 37% in 1999



Source: Global Insight, March 2010

APL

Freight rates reflect the imbalance in cargo value and demand as well. Historically import rates have been $1,000 to $2,500 more than export rates. Export commodities – usually low value raw materials such as wastepaper, forest products, or other agricultural products – command significantly lower freight rates than higher-value goods imported from Asia – such as electronics goods, furniture and clothing. The value of a commodity does make a difference in rates: low priced export cargo cannot afford to pay the same level of freight rates as higher value import cargo.

In fact the head haul (import) rates in effect subsidize much of the cost of the backhaul (export), and exporters benefit from this fact. If export rates were raised to a level that were compensatory, buyers of American goods would likely look for other sources for their needs.

Some have raised the possibility that so-called shipper owned containers are a solution for exporters. We don't agree. Shipper owned containers complicate equipment repositioning, because a shipper is going to want to have its container back at origin after use. A container still takes the same amount of room, and requires a full roundtrip, regardless of its owner. The cost of returning the empty container to the US would make the arrangement impractically expensive.

VI. Conclusion

APL increased its nominal Transpacific capacity by 25% between January 2009 and January 2010 while total industry capacity in the Transpacific fell by 10% during this same period. This fact, more than anything else, shows to our customers that APL is strong, and is committed to serving their needs. We remain in a period of uncertainty, but APL is betting on a bright future. There will be periods where equipment isn't in the right place, or vessel space is tight. The market must adapt to meet demand. I am confident that it will. The key is long term thinking, price stability at compensatory levels, and close partnership between carriers like APL and its customers. If the roundtrip economics improve and demand is sustainable, capacity will continue to return to the trade and lessen the impact of shortages. Industry analysts expect US import demand will grow during 2010. As the carriers adjust to handle this expected growth, more export capacity will naturally become available.

Carriers and shippers need to have better communication regarding anticipated demand, and their respective business requirements. Over the last three years APL has been a leader in facilitating unprecedented customer and carrier engagement. FMC Chairman Lidinsky has recognized the importance of this by stressing the need for shippers and ocean carriers to work together as "partners in recovery." We fully support this approach. There have been discussions between shippers and carriers about the merits of creating shipper advisory councils and arranging more meetings between carriers and the shipper community in the near future. We fully endorse more transparency and engagement with shippers.

The Ocean Shipping Reform Act permits carriers and shippers to negotiate creative and mutually beneficial business arrangements in OSRA service contracts. We have not adequately taken advantage of this opportunity. Shippers can, of course, guarantee their access to capacity by signing contracts with meaningful minimum volume commitments with asset owning ocean carriers. However service contracts can contain far more than volume commitments and rates. APL is also talking to its customers about a range of added value services and contract terms. Many of our customers are interested in contracts providing for guaranteed space, performance guarantees, performance metrics, service levels, tiered or differentiated rate structures and other customized enhancements. Of course, these types of services cost money, and they require long term thinking by both the shipper and the carrier. But we feel these types of partnerships are key to long term stability in the ocean transportation business.

Testimony presented to

U.S. House of Representative

Committee on Transportation and Infrastructure

Subcommittee on Coast Guard & Maritime Transportation

Hearing on

"Capacity of Vessels to Meet U.S. Import and Export Requirements"

March 17, 2010

By

Hayden Swofford

Executive Director

Pacific Northwest Asia Shippers Association

220 2nd Street, PMB 53

Langley, WA. 98260

(360) 321-5311

I am the Executive Director of the Pacific Northwest Asia Shippers Association. The association has a membership of sixteen companies that export and import exempt commodity Forest Products ie. solid wood items, lumber, logs, panel products(plywood), and Engineer Wood products. Last year, 2009, the members shipped 16,250 forty foot containers. The previous year, 2008 the members shipped 18,200 forty foot containers.

This testimony will address 3 points:

1. The containerized ocean carriers are not adequately addressing the commerce of the United States.
2. Containerized Ocean Carriers enjoy Anti-Trust Immunity
3. The United States Merchant Marine and U.S. Flag carriers are not participating in any significant manner in the international commerce of the United States.

1. The containerized ocean carriers are not adequately addressing the commerce of the United States.

My testimony will be limited to the Trans-Pacific trade. It is the largest trade segment in the world and the one I am most familiar with.

According to the Journal of Commerce the Top fifteen Carriers in the Trans-Pacific trade are:

Maersk Line (Danish)	Evergreen Marine (Taiwan)	APL (Singapore)
Hanjin (Korea)	Mediterranean Shipping (Switzerland)	
Hyundai (Korea)	OOCL (Hong Kong)	COSCO (China)
China Shipping (China)	K Line (Japan)	NYK (Japan)
MOL (Japan)	Yang Ming (Taiwan)	Hapag Lloyd (Germany)
CMA-CGM (France)		

All of these carriers operate in various Vessel Sharing Agreement (VSA) or slot charter arrangements. These arrangements are intended to allow the participating carriers lower cost of operations while offering higher levels of service. In the several years prior to 2009 and the economic collapse ocean carriers were busy dealing with continued market expansion based on best information available to them from various sources. This market expansion led many carriers toward ordering bigger, faster ships that were to provide to them economies of scale. These massive ships could not serve all ports due to their size, and would put a strain on existing infrastructure. Large investments were made in support of the coming vessels, from Ports to Railroads to trucks and warehousing. All of this focus was placed on dealing with imports into the United States. Carriers designed service structures to deal with imports and the import market, which is primarily retail and consumer oriented. Exports, while contributing some revenue to the carriers, was not and is not a motivating trade for carriers. Imports are primarily manufacture consumer goods and exports are primarily material based commodity items or raw materials and agricultural products.

The Economic collapse in 2009 has forced the carriers to respond and adjust to severely contracting import markets. Exports were affected as well. Exports contracted quickly, but not to the extent that imports did. The carriers' best response was to idle ships. Hundreds of container ships have been parked around the world, unemployed. Service patterns that were designed to deal with the expanding import markets were diminished and many sailings withdrawn, from all coasts, in a short period of time. The carriers were able to make adjustments with relative expediency to try and deal with the changed economic circumstances. In the Pacific Northwest, there are three major ports that carriers call on, Seattle, Tacoma and Portland. Seattle and Tacoma are deep water ports capable of handling the largest vessels in the trade. Portland is a river port and thus vessel size is restricted due to draft or depth issues. While all coasts have experienced service withdrawals, I would suggest that the Pacific Northwest has had the most severe reductions in capacity. I was not able to gain exact information from the Ports of Seattle and Tacoma, but I estimate that in the time frame of one year, March of 2009 to March of 2010 capacity from the three Pacific Northwest ports has been reduced by approximately 45%. Carriers have dropped service string rotations, made 'winter deployment adjustment' entered into new 'slot charter' arrangements, or just plain stopped calling. As recently as last week a carrier announced that it would stop calling with a critical service to Japan with its own ships, but would continue to offer service but joining with another carrier. The other carrier is a part of a 'VSA' that already has 4 carriers participating in that service, now there will be five carriers sharing space and we will be down a full vessel sailing, which will in turn further reduce capacity by approximately 600 forty foot containers per week available from one port, on top of the already diminished capacity.

While the carriers have been busily adjusting capacity, and as a result container or equipment availability, the export market from the Untied States has rebounded and is on a great growth swing. The ocean carriers are not prepared to deal with this and are reticent to make deployment adjustments to capacity to allow exporters to deal with a strong desire by foreign markets to buy our exports. Exporters are not able to provide, due to lack of carrier capacity reliable supply to foreign markets. This strong demand for our products may soon slowdown if exporters are not able to deliver their products. This lack of capacity has strong economic repercussions throughout the supply chain. Several recent articles that have described what is happening to exports, but even they only scratch the surface. The Cunningham Report on March 8th reported that SB&B foods in North Dakota is not able to get containers at local rail terminals to load and ship their soybeans, but have to send trucks 250 miles to Minneapolis to get the containers, and quite often the trucks come away with no equipment, because the carrier does not have any at that time. Additionally they have experienced bookings (which are reservations for shipments) being canceled two days prior to loading cargo for shipment. The Wall Street Journal in an article on March 12th cited many examples of difficulties exporters are dealing with, including one Minnesota exporter of agricultural products that lost business due to the long delivery time on his product.

From Pacific Northwest Asia Shippers Association members I am able to cite several examples of where carriers have behaved in a punitive manner. Last week in one day at two different ports with two different carriers one member was advised the following:
One shipment that was to be 20 containers was summarily reduced to seven, even though nine containers had been picked up for loading. There was no remedy offered at that time for the remaining 13 containers. The carrier did not offer to take them on a later vessel.
At a different port with a different carrier the same member was advised that they had no more equipment available to them at the origin ocean terminal to complete the booking of ten containers. While the carrier did have empty containers at this terminal, instructions were that these containers were to be loaded empty to the vessel, and if the shipper wanted to get the remaining four containers to complete the booking they would have to go to another location to pick them up, a distance of 40 miles, with heavy traffic, and was to be done at the shippers' expense. Carriers often move empty containers back to Asia in order to provide equipment to shippers there.

Another member sent me 24 pages of e mails outlining problems they have had in trying to get containers to load cargo for bookings or out right cutting of bookings. In either case the results are not good. In one instance this particular member had ten containers cut, no remedy offered and no remediation. Those ten containers represented entire income for the company for that week. Only after several calls, discussions, e mails and acrimony this booking was restored to the member, but it must be noted that the carrier stated they would cut some other shippers business in support of this. When the carriers claim there is no equipment, this advisory takes place in most cases only after the trucker arrives to pick up an empty container to load and is turned away, without getting that container. The expense of this 'dry run' is the shippers. This happens over and over with many carriers operating on a first come first serve basis for supplying equipment for loading cargo. When shippers are not able to get the equipment booked for shipments, they will try to 'roll' cargo to the next ship, only to be told that there is no space for six to eight weeks. In this case shipments are going out, if any equipment is picked up, short of the agreed sales and adjustments have to be made on financial documents and income to the shipper is lost. When cargo is cut, no alternative or remedy is offered. This takes place with as little as two days or less, prior to loading of cargo for delivery to the vessel. There in no chance of moving that cargo and the next available booking may be six to eight weeks out. This is lost income to the shipper. The shipper is proving to be an unreliable source of product for the buyer, but not due to his own actions. Carriers that operate on a 'first come first served basis' when asked what can be done, suggest using a 'more aggressive trucker' and also comment that this policy of first come first served will not change.

In order to better understand this circumstance the 'sales cycle' needs to be related. The sale occurs when the shipper or seller agrees on the terms of a sale with a buyer. The buyer the moves to put into place the financial requirement he has to have to complete their side of the transaction. The seller then puts in to motion the necessary actions to either procure or product the product the buyer needs. The timing on shipping the goods is decided. The seller makes a booking with the carrier for move the goods to the buyer. These commitments are made, goods are produced, financial arrangements are made and the transaction is to be completed according to terms of the sales agreement, which is all cases means the delivery of the purchased goods. When a carrier cuts cargo, without remedy, or does not have equipment available to complete the shipment, the seller or exporter deals with real jeopardy. The sales cycle can be 60 to 90 days from execution to completion. The members are now saying that it is very difficult to make further sales because they do not know when they will be able to make delivery. The part of this supply chain that is breaking down is the ocean transportation component.

We are dealing with circumstances that make it extremely difficult, as a shipper, to provide reliable delivery of goods to the market. If there was sufficient space and equipment members would be able to ship 15 to 20% more containers than last year. Some carries do advise that they have space and equipment available in the ports of Los Angeles or Long Beach. For our members moving their export product down to those ports is not feasible due to heavy transportation costs.

I have addressed only the export portion of the associations shipping to this point. Carriers focus and vessel deployments in the Trans-Pacific are made based on the movements of imports from Asia to North America. Changes in deployments, vessel layups and other recent changes in operations are based on the carriers need in the import market. The movement of imports is just about as perilous as exports. Imports from major Asian ports are facing similar problems, not quite as severe as the exports, but none the less extremely difficult. Last week one carrier advised that cargo from a major Chinese port was being rolled. This advise was given one day before the expected sailing. At least it was not cut. This is against a contract that provides for 'guaranteed space' from this port. Another carrier providing service from a port in South East Asia, albeit one that is not mainline, advised that they may stop providing equipment needed for shipments from a particular origin due to the cost factor of moving containers to this origin, which had not previously been an issue. The alternatives from this origin are very limited and the member relies on this carrier to ship goods from this origin to the USA. The very same actions that carriers have taken to adjust vessel operations that have had great effect on the ability to export, is also having a great effect on our ability to import. The two to three weeks prior to Chinese New Year was almost a panic situation for many importers trying to arrange for space. It was impossible to arrange any bookings. Yet it is the imports that drive the carriers, and by their own statistical information imports by volume are greater than exports.

I have tried to address comments primarily to the experience of the members of the association. I have referenced articles that draw on similar experiences by other shippers. Based on various meeting and discussions with other shippers, both exporters and importers, the frustrations are the similar, the experiences are similar and the ability to export and import are constrained by the level of capacity currently offered by the container ocean carriers. This appears not to be unique to the United States. A quote taken for the Journal of Commerce March 12th edition made by the newly elected Chairman of the European Maritime Transportation Council, Jean Louis Cambon, would support this view: "Uppermost in the shippers mind, right now, is the shortage of capacity on some of the major shipping routes in the world. Carriers must understand that by restraining capacity below trade demand and creating cargo roll-overs, they will encourage the increasing number of shippers who want to shorten their supply chains to shift sourcing of their products to origins closer to consumption markets, which will eventually reduce the ton/miles transported and the fleet necessary to carry them." At this time containerized ocean carriers are not adequately addressing the commerce of the United States.

2. Containerized Ocean Carriers enjoy Anti-Trust Immunity

Anti-Trust immunity was granted to steamship lines in the shipping act of 1916.

Anti-Trust immunity was again addressed in the Merchant Marine Act of 1920, of which the surviving section is referred to as the Jones Act, which protects domestics waterborne trades.

When Anti-trust immunity was granted the world was a much different place, trade was conducted differently and the idea of containers was not close to being invented.

The Transpacific trade supports two discussion groups that by the granted anti-trust immunity are able to discuss the market and operating conditions, trends, costs and a wide range of items that under normal business practices would be illegal. The discussion group for the export trade has ten of the top fifteen carriers listed previously. This group is known as the WTSA. The discussion group for the import trade has thirteen of the top fifteen carriers as members This group is known as the TSA. The discussions these groups are able to have can be better summarized by the FMC. Both groups handle the majority share of the moving containerized cargo in the Transpacific market. But their discussions do not stop with general business issues. Discussion at certain levels is had concerning individual customers. In this regard it is felt that more time is spent talking to each other than with their customers. While both discussion groups are very careful to advise on all announcements that they are non binding and voluntary, it is not often that much variance is found amongst the carriers involved in any joint discussion decisions and agreements. One thing that carriers do not have permission to discuss as a group is the control of carrier capacity. But those discussion can be held at the VSA level as it effects the individual carriers involved in the VSA, not the larger discussion group (TSA or WTSA) as a whole.

Shippers find themselves in a market that has restricted capacity by the carriers, both individually and collectively, which has extreme effects on the ability to deliver goods to market. The question that can be asked, but not answered is how much different would the current shipping environment be, regarding carrier/shipper relations and capacity circumstances if anti-trust immunity was not part of the carriers business model. As a shipper group we can only speculate that carriers would expend more effort and energy to understand the nature and needs of the customers (shippers) in order to provide a better and more responsive product. As it appears now, carriers go to great expense to talk and discuss amongst themselves market conditions; trading information that is derived from third party sources that in the current export market is showing to be inaccurate. In a recent meeting held between WTSA carriers and AgTC (Agricultural Transportation Coalition) members, carriers showed their projections for containerized export growth was 4.1% in the Trans-Pacific trade. This was a projection made by a third party analyst. No discussion was had with customers (shippers) concerning what they were experiencing in sales and shipping needs. Carriers used this information as guidance to make decisions on routes and shipping deployments, in combination with similar import analysis. Of the AgTC members attending this meeting not one of them said they were experiencing anything less that double digit export growth.

Anti-Trust immunity for ocean carriers is concept that was relevant and effective in a different environment. It is a condition of commerce that affects all exporters and importers. The difficult question to answer is would those that utilize ocean transportation be better served in a market that does not allow for Anti-Trust immunity. It is not a question that can be answered in this testimony, only raised, but part of the original reason for this immunity is the next section of the testimony:

3. **The United States Merchant Marine and U.S. Flag carriers are not participating in any significant manner in the international commerce of the United States.**

Preamble to the Merchant Marine act of 1920 (from Federal Maritime Administration website):

It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained. – Sec. 1. Purpose and policy of United States (46 App. U.S.C. 861 (2002)), MARAD

Shipping Act of 1984 (from Federal Maritime Administration website):

SEC. 1. (46 App. U.S.C. 1701 note (2002)). *This Act May be cited as the "Shipping Act of 1984".*

SEC. 2. DECLARATION OF POLICY (46 App. U.S.C. 1701 (2002)). *The purposes of this Act are --*
(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
(2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; and

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs; and
(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

The above was copied from the Federal Maritime administration web site.

At this time there is no significant participation of a U.S. Flag carrier in the transpacific market. Matson Lines as part of a VSA arrangement does offer very limited import service, but not export service. The fifteen top transpacific containerized ocean carriers listed previously are all foreign owned and based carriers.